

C O N F I D E N T I A L
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
DURHAM DIVISION

LIGGETT GROUP, INC.)

§ PLAINTIFF)

- against -)

BROWN & WILLIAMSON TOBACCO)
CORPORATION)

○ DEFENDANT)

BROWN & WILLIAMSON TOBACCO) CIVIL ACTION
CORPORATION) NO. C 84-617-D

PLAINTIFF)

- against -)

LIGGETT GROUP, INC. and ○)
GENERIC PRODUCTS CORPORATION,)
COUNTERCLAIM-DEFENDANTS)

* * * * *

DEPONENT:

THOMAS W. WILSON

DATE:

February 12, 1986

REPORTERS:

CATHERINE M. PATEN

ALICE TANNENBAUM

TANNENBAUM, KUCHENBROD & PATEN
COURT REPORTERS
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824 24126

APPEARANCES:

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* * * * *

The deposition of THOMAS W. WILSON, was taken on behalf of the Plaintiff, before Catherine M. Paten and Alice Tannenbaum. Notary Publics for the State of Kentucky at Large, at the offices of Woodward, Hobson & Fulton, 2500 First National Tower, Louisville, Kentucky, on February 12, 1986, at 10:00 a.m. Said deposition was taken pursuant to notice and for purposes of discovery and as provided by the Federal Rules of Civil Procedure.

* * * * *

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THOMAS W. WILSON,

ed upon oral examination by counsel for th
tiff, after having been first duly sworn,

ned and deposed as follows:

EXAMINATION

MR. TOPMAN:

Q. Good morning, Mr. Wilson.

A. Good morning.

Q. Please state your home address.

nt employment.

A.

Brown & Williamson T.

ration.

MR. PHILLIPS: You may want

name on the record.

Q. You don't have it? Okay.

A. Thomas W. Wilson.

Q. Okay. Can you describe your

al education for me, Mr. Wilson, please?

A. Went to Virginia Commonwealt.

ersity in Richmond, Virginia, where I rece

Degree in Accounting.

Q. Any post undergraduate course.

A. No.

Q. Are you a C.P.A.?

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1 A. No.

2 Q. When did you graduate from college?

3 A. 1972.

4 Q. Can you describe for me where you

5 worked from the time you graduated college to the

6 present time?

7 A. Started work at Brent Co, Incorporated

8 which is a small manufacturer of railroad ball bearings.

9 worked there for 3 1/2 months as an accounts payable

10 clerk.

11 I then took employment with Brown &

12 Williamson Tobacco in September of 1972 at Petersburg.

13 Virginia, as a junior accountant.

14 Then I transferred to Louisville.

15 Kentucky, 3 1/2 years later.

16 Q. 1975?

17 A. Yeah. Where I worked in the budget

18 and cost department as a cost and budget account,

19 transferred to the general accounting department a year

20 later as supervisor of budgets and sales accounts. And

21 then 4 1/2 years later I transferred to my current

22 position which is manager of budgets and forecasting.

23 Q. That would be 1980?

24 A. Yeah, '81, I believe.

25 Q. And have you remained in that

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1 position since?

2 A. Yes, sir.

3 Q. Can you describe generally your
4 responsibilities in that job?

5 A. I currently supervise 3 cost
6 analysts, who their responsibilities are to coordinate
7 the budget activities, consolidate all the budgets and
8 submit to management the budget packages. We prepare a
9 financial report which we submit to the senior
10 management monthly reporting actual variances against
11 those budgets. We do profit forecast quarterly for
12 B.A.T.U.S., we do special projects as deemed appropriate
13 whenever management needs assistance in those areas.

14 Q. Okay.

15 A. We also do some 5-year plan
16 forecasting.

17 Q. Who are the 3 people that work for
18 you, Mr. Wilson?

19 A. Jerry Brumleve, Dan Elswick, and
20 Jackie Bearden.

21 Q. You mentioned a quarterly profit
22 review?

23 A. Yes, sir.

24 Q. Is that referred to in the vernacular
25 as the QPR?

1 A. Yes, yes. State of the business in
2 some cases.

3 Q. I'm sorry?

4 A. Sometimes it's used in terms of state
5 of the business.

6 Q. Instead of going QPR?

7 A. Yes, sir.

8 Q. It's done on a calendar quarter?

9 A. Yes, sir.

10 Q. Are you principally responsible for
11 the preparation of the QPR?

12 MR. PHILLIPS: Objection to form.

13 A. My staff and myself are responsible
14 for it, yes.

15 Q. To whom is the QPR distributed?

16 A. To senior management. Most -- I would
17 say the VP levels and to B.A.T.U.S.

18 Q. And B.A.T.U.S. stands for?

19 A. B.A.T.U.S. stands for -- it's our
20 holding company.

21 MR. PHILLIPS: Do you want to know
22 what the initials stand for?

23 Q. Yes, what does B.A.T.U.S. stand for?

24 A. I'm not sure I can explain that other
25 than it's just British American Tobacco U.S. I guess.

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1 Q. How long after the quarter is the QPR
2 usually completed?

3 A. Normally within the second week, the
4 month following.

5 Q. Prior to its being sent to senior
6 management and B.A.T.U.S., who reviews, if anybody, the
7 drafts?

8 A. Tony Bacon, and in some cases Carl
9 Heger.

10 Q. Is there a meeting to discuss the QPR
11 amongst senior management after it is issued?

12 A. I'm not aware of any routine meetings.

13 Q. What about, is there a routine meeting
14 with B.A.T.U.S. after issuance of a QPR about the QPR?

15 MR. PHILLIPS: Objection. With
16 B.A.T.U.S. you mean between Brown & Williamson and
17 B.A.T.U.S.?

18 MR. TOPMAN: Yes.

19 A. There is what they call a chairman's
20 meeting or an operating meeting which they -- the
21 chairman of each corporation will discuss the quarterly
22 results.

23 Q. And in 1984, who would have been the 2
24 participants at that meeting, one on behalf of Brown &
25 Williamson and one on behalf of B.A.T.U.S.?

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1 MR. PHILLIPS: Objection as to
2 form.

3 A. I believe Wally Hughes would have been
4 a participant for Brown & Williamson.

5 Q. What about for B.A.T.U.S.?

6 A. Charley McCarty. Charley McCarty,
7 C.I. ^SMcCarty.

8 Q. Okay. In 1985 the same question?

9 MR. PHILLIPS: Same objection.

10 A. There again, I believe it would be
11 Tommy Sandefur. I'm not sure because of the transition
12 we were going through and there again, I believe either
13 McCarty or Frigon at B.A.T.U.S.

14 Q. Okay. Did Mr. Frigon join B.A.T.U.S.
15 in 1985?

16 A. I don't know.

17 Q. What is Mr. Frigon's position at
18 B.A.T.U.S.?

19 A. His exact title I'm not sure of, but I
20 believe he's chairman.

21 Q. And Mr. McCarty's position?

22 A. He's retired now.

23 Q. Where does he live, sir?

24 A. I don't know.

25 Q. You mentioned budget packages. What

1 is a budget package comprised of?

2 A. Basically budgeted trading profit
3 statements, contribution statements from the domestic
4 business, international business, detailed marketing
5 budgets, detailed G and A budgets, detailed
6 international budgets, detailed corporate account
7 budgets.

8 Q. By corporate account budgets what are
9 you referring to, Mr. Wilson?

10 A. One would be something called COC
11 manufacturing which is a culmination of overheads for
12 the branches, inventory valuation accounts.

13 Q. These were on a budgeted basis?

14 A. Yes, sir.

15 Q. I take it this package is like in a
16 little book?

17 A. It's a fairly good sized book. It's
18 monthly budgets, so it would have each month's activity.

19 Q. I see. Do you have these in your
20 files, by the way?

21 A. Yes.

22 MR. PHILLIPS: You've also gotten
23 them, I believe. I think you also have gotten them.

24 MR. TOPMAN: We've gotten a book
25 containing monthly budgeted training profit.

1 MR. PHILLIPS: I believe that the
2 budget package he's referring to has been produced to
3 you. If you would like me to check on it I will. I
4 believe it has been.

5 A. I think, if I may, I'm referring to a
6 consolidated book. What they have received is the
7 monthly reports reflecting what's in their consolidated
8 book, so they have not received it in the total context
9 of the budget binder, per se.

10 Q. You also mentioned -- let me back up.
11 The budget package is something you are responsible,
12 your department and you are responsible for preparing?

13 MR. PHILLIPS: Objection to form.

14 A. Consolidation of, yes. We have input
15 from various other departments who create their own
16 individual budgets. We are in more of a gathering
17 consolidation mode.

18 Q. And is there such a sheet prepared for
19 generics such as budgeted trading profits for generics
20 every month?

21 A. No, sir.

22 Q. There is not?

23 A. No, sir.

24 Q. This is the budgeted trading profit
25 for --

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B24 24135A

1 A. Total corporation.

2 Q. I see. Do you prepare, other than the
3 budget package, trading profit on a budget basis for
4 generics?

5 MR. PHILLIPS: Objection to form.

6 A. Yes, we have.

7 Q. Have you done that on a regular basis?

8 MR. PHILLIPS: Objection to form.

9 A. Regular basis being --

10 Q. Routine. Either a monthly basis, for
11 example, for a quarterly basis?

12 A. We don't have a monthly trading profit
13 for generics. We do it on a consolidated basis, annual.

14 Q. In other words, you calculate for
15 generics a budget on an annual basis?

16 A. Yes, sir.

17 Q. Do you do that on a regular basis?

18 MR. PHILLIPS: Objection to form.

19 What do you mean by that?

20 Q. Prepare an annual budget for
21 generics.

22 A. I'm going to say yes to the extent we
23 have defined a 1984 budget and we have a 1985 budget for
24 generics defined.

25 Q. You refer to a 1984 budget.

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1 A. Marketing spend, sales quantities and
2 brand contribution.

3 Q. The marketing spend and the sales
4 quantities are figures that go into calculation of brand
5 contribution?

6 A. Yes, sir.

7 Q. Is there a trading profit figure
8 included in the financial monthly report for generics?

9 A. No, sir.

10 Q. You mentioned a 5-year plan. Does
11 Brown & Williamson have a practice of regularly
12 preparing 5-year plans each year?

13 A. Yes, sir.

14 Q. What was your department's
15 participation in that, say, of 1984 and 1985?

16 A. There again, basically the same as
17 the budget process, the consolidation of data generated
18 by other sources, sales forecasts coming from market
19 research, cost factors coming from the cost group, and
20 marketing coming from the marketing group.

21 Q. Okay. You say sales forecast comes
22 from marketing?

23 A. Marketing research for the most part.

24 Q. Who heads that up?

25 A. Betty Sproule, the forecasting unit.

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1 Q. The cost information, is that a
2 reference to variable manufacturing costs?

3 A. Yes, sir.

4 Q. Does it refer to anything else?

5 MR. PHILLIPS: Objection.

6 A. When I say variable cost it could mean
7 excise^s tax, it could mean freight, it could mean
8 stamping, all those components that are deducts to
9 variable margin.

10 Q. And who heads up the cost group that
11 provides you that information?

12 A. Gwen Willingham.

13 Q. Then the third item you mentioned was
14 marketing. Who would provide you with that information?

15 A. We coordinate a lot of our activities
16 through Tom Morraine, who is a finance liaison with the
17 marketing group.

18 Quite often we will get information
19 directly from senior marketing people.

20 Q. These are the sales^s force people?

21 A. No, sir. This is what we call
22 corporate office marketing staff.

23 Q. Who heads corporate marketing?

24 A. Dick Blott.

25 Q. When did Miss Willingham become head

1 of the cost group, roughly, Mr. Wilson?

2 A. I'm going to say November, '84.

3 Q. And who headed that up prior to Miss
4 Willingham, Mr. Tucker?

5 A. No, Henry Frick.

6 Q. Mr. Frick.

7 And he was there for 1984?

8 A. Yes, sir. He was there for quite some
9 time.

10 Q. Are you familiar with the line item
11 sales promotion specific?

12 MR. PHILLIPS: Objection. What do you
13 mean by aware?

14 Q. Brand contribution sheets.

15 A. Yes.

16 Q. Do you receive those reports on a
17 monthly basis?

18 MR. PHILLIPS: Those reports, you mean
19 the brand contribution sheets?

20 MR. TOPMAN: No, the ones that refer
21 to sales promotion specifics.

22 Q. Do you receive reports on a monthly
23 basis which reflect sales promotion specific expenses?

24 A. Yes, they are at my access, yes.

25 Q. Okay. Who prepares those reports?

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1 A. They are system-generated reports, b
2 the responsibility for distribution, the input to thos
3 sheets would come from general accounting group.

4 Q. That was the case in 1984 and 1985?

5 A. Yes, sir.

6 Q. When did you first learn that Brown &
7 Williamson was considering going into the generic
8 business?

9 A. July of 1984.

10 Q. How did you learn that?

11 A. Basically through my discussions with
12 Gene Tucker, my superior at that point in time.

13 Q. Mr. Tucker was assistant controller
14 at that time?

15 A. Yes, sir.

16 Q. Had you heard that Brown & Williamson
17 was considering doing or manufacturing generics prior t
18 discussion in July of '84?

19 A. I'm going to say not in my capacity
20 at work, no.

21 Q. What about not in your capacity at
22 work?

23 A. I would say it was probably rumor mill
24 as such, but that's --

25 Q. Have you ever been involved in your

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1 position as head of budgeting at Brown & Williamson in a
2 situation where Brown & Williamson went into a new
3 product, a cigarette product besides generic?

4 MR. PHILLIPS: Objection to form.

5 A. Have I been involved in it to -- while
6 I have been employed with B&W we have introduced new
7 brands, yes.

8 Q. Have you been involved in the
9 budgeting process related to that?

10 MR. PHILLIPS: The introduction of new
11 brands, what that refers to?

12 A. Yes, sir.

13 Q. Have you ever prepared scenarios that
14 show possible profit which might accrue from the entry
15 of that new product?

16 A. Yes, sir.

17 Q. That would be normal responsibility
18 for your department?

19 MR. PHILLIPS: Objection to form.

20 A. Yes, sir.

21 Q. But you didn't do that with respect to
22 generics; is that right?

23 MR. PHILLIPS: Objection to form.

24 A. Prior to July 1984? That's correct.

25 Q. Do you know when Brown & Williamson

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1 began to manufacture generics?

2 A. The specific dates, no, sir.

3 Q. Roughly, July of '84?

4 A. I really can't say.

5 Q. Do you remember whether you learned
6 about Brown & Williamson considering going into generics
7 before or after they had begun to manufacture generics?

8 A. I don't know when they started
9 manufacturing so I can't answer that.

10 Q. Let's mark as Wilson Exhibit 1 a 5-
11 page document titled, "File notes sales forecast and
12 profit scenarios," stamp numbers 171807 through 811.

13 (Whereupon, Wilson Deposition Exhibit
14 1 was marked for identification.)

15 Q. I show you what has been marked as
16 Wilson Exhibit 1 for identification, Mr. Wilson, and ask
17 you to review that, please.

18 Q. Have you had a chance to review Wilson
19 1 for identification?

20 A. Yes.

21 Q. Have you ever seen that before, Mr.
22 Wilson?

23 A. Yes.

24 Q. When did you first see it?

25 A. I would say sometime around July.

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1 Q. Who gave it to you?

2 A. Gene Tucker.

3 Q. Okay. And what did Mr. Tucker say to
4 you?

5 A. This is some background on some work
6 that had been performed in the generic, potential
7 generic entry into generic business.

8 Q. Can you describe from the
9 conversation as best you recall what you said back to
10 him and what he then said to you back and forth, the 2
11 of you?

12 A. It's going to be very difficult but
13 basically what we were doing was he was bringing me
14 current on the events that had happened prior to July,
15 so that when the need arose for us to do any further
16 updates, that we would have some background in which to
17 build from.

18 Q. Okay. And did you subsequently, after
19 receiving this file note, do work with respect to
20 generics and budgeting in your department?

21 A. Yes, sir

22 MR. PHILLIPS: Go ahead.

23 A. We became more involved with the
24 actual calculations at that point in time.

25 Q. You used this file memo as your sort

1 of introduction and building block?

2 A. Or background as to what had
3 transpired prior to.

4 Q. Prior to July of '84?

5 A. (Nodded head affirmatively.)

6 Q. Is this the only document you
7 received from Mr. Tucker?

8 A. No, sir.

9 Q. What else did you receive from Mr.
10 Tucker?

11 A. Basically most -- any of the
12 significant calculations that they would have gone
13 through I would have received a copy of.

14 Q. How much material was it, say, in
15 inches?

16 A. Probably a couple inches, an inch.

17 Q. Did he explain to you any of the
18 calculations?

19 MR. PHILLIPS: Objection to form. You
20 mean how they were arrived at?

21 A. I think probably on an exception
22 basis we discussed specifics on certain items depending
23 on a need and what work was being performed.

24 Q. Do you have any recollection of which
25 particular ones?

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1 A. Not particularly, no.

2 Q. Okay. Is this, on Wilson Exhibit 1,
3 is this any of your handwriting?

4 A. No, sir.

5 Q. Do you recognize whose it is?

6 A. That particular handwriting, no, sir.

7 Q. I take it that everything that Mr.
8 Wilson has referred to in terms of the calculations and
9 everything have been produced from his files?

10 MR. PHILLIPS: I believe so.

11 Q. Did Mr. Tucker explain to you who had
12 been involved in making 2 calculations that went into
13 the documents he gave you?

14 MR. PHILLIPS: Objection as to form.

15 A. I don't recollect him giving me
16 specific names as to who was involved.

17 Q. Did you acquire an understanding of
18 how those calculations were made at some point in time?

19 MR. PHILLIPS: Objection to form. The
20 problem is we're talking about some vague calculations.
21 We don't know what kinds of calculations you are talking
22 about, calculations of forecast, of unit sales, for --

23 MR. TOPMAN: Whatever calculations Mr.
24 Wilson referred to when he gave his answer.

25 MR. PHILLIPS: Did you come to have an

1 understanding?

2 MR. TOPMAN: When your time comes,
3 Will, you can examine on redirect.

4 MR. PHILLIPS: Go ahead, please.

5 A. Repeat the question again. I'm sorry.

6 Q. That makes two of us, Mr. Wilson.

7 Did you come to have an understanding
8 of how the calculations were made in the documents which
9 Mr. Tucker gave you?

10 MR. PHILLIPS: Same objection. All
11 the documents which Mr. Wilson gave him and all the
12 calculations in there, is that what your question is?

13 Q. Or any of them, yes.

14 A. I would say no, we did not sit down
15 and talk about the specifics of each calculation, only
16 when future calculations were involved, if I needed
17 assistance as to how it related to his previous
18 calculation, that we would divulge into that detail.

19 Q. Were you called upon or your
20 department called upon to make any periodic or other
21 routine kinds of calculations with respect to generics?

22 MR. PHILLIPS: Objection to form.

23 A. What do you mean by other routine
24 calculations? I'm not sure.

25 Q. Well, were there any periodic

1 calculations that were required with respect to
2 generics?

3 MR. PHILLIPS: Of any kind?

4 A. Yes.

5 Q. What were they?

6 A. I would say various brand
7 contribution scenarios based on various assumptions laid
8 forth, various trading profit calculations based on
9 various assumptions, what-if-type of scenarios; if we do
10 this, how much is left for trading profit or rebates
11 relative to these particular assumptions, what
12 break-even type analyses, what volumes would we need to
13 break even under various scenarios, just a multiplicity
14 of those type of calculations.

15 Q. Let's mark as Wilson Exhibit 2 a 2-
16 page document, first page is a memo from Gene Tucker to
17 Lanny dated 7-18-'84, and the second page is entitled,
18 "B&W weighted average costs/profits generic business"
19 with the initials at the lower left T.W.W., revised
20 7-18-'84.

21 MR. PHILLIPS: Bate numbers?

22 Q. Stamp numbers are 150066 through 67.

23 (Whereupon, Wilson Deposition Exhibit
24 2 was marked for identification.)

25 Q. Would you review that, please, Mr.

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1 Wilson?

2 Have you reviewed Wilson 2, Mr.

3 Wilson?

4 A. Yes, sir.

5 Q Can you identify it for me, please,

6 sir?

7 A. Basically what this document is is a
8 recap.

9 MR. PHILLIPS: Referring to the second
10 page of it?

11 A. I'm sorry, referring to the second
12 page, a recap of various calculations of what we would
13 call weighted rebate scenarios, if you want to call it
14 that. When I call them rounds, basically that stands
15 for an estimate.

16 Q. All right. You prepared the second
17 page of this document; is that right, as part of your
18 job as a budget chief at Brown & Williamson?

19 MR. PHILLIPS: Objection to form.

20 MR. TOPMAN: What's your objection?

21 MR. PHILLIPS: Read the question back.

22 (Whereupon, the reporter then read the
23 record.)

24 MR. PHILLIPS: First, I don't know if
25 the testimony is he's the budget chief and, second, I

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1 don't think that -- my objection goes to the second part
2 of your phrase, as part of your job as the budget chief
3 at Brown & Williamson.

4 It assumes facts not in evidence but
5 ask him those questions.

6 MR.TOPMAN: Pardon?

7 MR. PHILLIPS: It assumes facts not in
8 evidence.

9 MR. TOPMAN: He already testified in
10 past budgets these kind of calculations --

11 MR. PHILLIPS: I don't think he
12 testified he's the budget chief.

13 Q. Are you head of the budget department
14 at Brown & Williamson?

15 A. I'm manager of the budget and forecast
16 section.

17 Q. Okay. Did you prepare the second
18 sheet as part of your job there in that position?

19 A. Yes, sir.

20 Q. Thank you sir.
21 Do you see where it says original
22 financial?

23 A. Yes, sir.

24 Q. What does that refer to?

25 A. I believe it's the original, call --

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1 it the original numbers using the original proposition.

2 Q. Let's mark as Wilson Exhibit 3 for
3 identification a document handwritten at the top,
4 "Final, limited, 5-15-'84," showing a copy given CJH,
5 EPT and TWW, stamp numbers are 79504 through 759 --
6 79524.

7 (Whereupon, Wilson Deposition Exhibit
8 3 was marked for identification.)

9 Q. Would you review that please, Mr.
10 Wilson?

11 MR. PHILLIPS: Do you want him to read
12 all of it or just look it over?

13 Q. I'm going to ask him to identify it.
14 I assume the stamp numbers which you folks put on there
15 may be of interest, I don't know.

16 Have you reviewed Wilson Exhibit 3 for
17 identification, Mr. Wilson?

18 A. Yes, sir.

19 Q. And have you seen it before?

20 A. Yes, sir.

21 Q. And can you identify it for me?

22 A. It's just a proposal, a
23 recommendation or an assessment of the various
24 alternatives which are considered for action by the
25 executive group.

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1 Q. Who did you get this from?

2 A. I believe I was copied by Gene Tucker.

3 Q. Do you remember when you received it?

4 A. I say sometime, looks like May or
5 June.

6 Q. 1984?

7 A. Yeah, it looks like I even had input
8 to it in May.

9 Q. And this relates to a proposal with
10 respect to Brown & Williamson entering into the generic
11 business; is that right?

12 MR. PHILLIPS: Objection to form.

13 A. I'm not sure what the total purpose
14 of this document, only that it was a summation of
15 background and various alternatives.

16 Q. What are the various alternatives
17 there outlined in there, as you understand it?

18 A. Well, I would have to re-read the
19 document, but it looks like enter the generic business,
20 converting Richland 25's to 20's at generic pricing,
21 introducing a branded generic, black and white.

22 Q. Do you remember when you received
23 this?

24 MR. PHILLIPS: Objection.

25 Q. Withdrawn.

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1 So you received this prior to July of
2 1984; is that correct, Mr. Wilson?

3 A. Apparently so. I was mistaken in
4 terms when we first got communication so it was more
5 like May.

6 Q. If you would look at the first page
7 there^s is some handwriting on the top and the bottom.
8 Can you identify the handwriting for me, please?

9 A. I believe the handwriting on top would
10 be Gene, Gene^o Tucker's, I'm sorry. The handwriting at
11 the bottom I do not recognize.

12 Q. Okay.

13 MR. PHILLIPS: Referring to the copy
14 again when you talk about Mr. Tucker's?

15 THE WITNESS: Yes.

16 MR. TOPMAN: He's talking about the
17 handwriting at the top of the^p page.

18 MR. PHILLIPS: There is 2 different
19 types of handwriting at the top of the page.

20 MR. TOPMAN: Your chance will come if
21 you would like to testify.

22 MR. PHILLIPS: I want to make the
23 record clear.

24 MR. TOPMAN: I want you to take your
25 chance when it comes time.

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1 MR. PHILLIPS: Let's just make the
2 record clear.

3 MR. TOPMAN: I'm perfectly willing to
4 do that. You can do it at the appropriate time.

5 Q. Would you look at the latter portion
6 of the document and you will see, I believe, a schedule
7 entitled, "Trading profit effect of B&W entering generic
8 market."

9 MR. PHILLIPS: Page number?

10 Q. Stamp number is 79521, and at the
11 bottom it shows a trading profit of zero from 1984
12 through 1988. Do you see that page, Mr. Wilson?

13 A. Yes.

14 Q. Did you have any participation in the
15 preparation of that page?

16 A. I believe so.

17 Q. You see the handwriting at the top of
18 the page?

19 A. Yes, sir.

20 Q. Starting with the word June, do you
21 recognize whose handwriting that is?

22 A. No, sir, I do not.

23 Q. Did you prepare this schedule?

24 A. No, I did not. One of my staff more
25 than likely prepared this schedule.

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1 Q. And gave it to you?

2 A. Yes.

3 Q. Okay. The variable cost figure there
4 is \$14.21 under 1984.

5 Who calculated that?

6 A. That would have been provided to us by
7 the ^s cost department.

8 Q. That would have been at that time?

9 A. Gwen -- let's see, 1984, early, this
10 would probably be Henry Frick's staff would have worked
11 on this.

12 Q. Okay. Do you know the composition of
13 that figure or have you ever seen the composition of
14 what goes into that \$14.21 figure?

15 MR. PHILLIPS: Objection to form.

16 A. I know what makes up variable costs in
17 terms of components, if that's what you are referring
18 to, manufacturing costs.

19 Q. But specifically this figure, you are
20 not involved in its calculation?

21 A. No, sir, I'm not.

22 Q. Okay. Who provided you with the
23 trading allowance figure of a 1.65 per thousand?

24 MR. PHILLIPS: Objection to form.

25 A. I'm going to suggest that that was

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1 given to me by Gene as an assumption that we wanted to
2 fold in.

3 Q. This is Gene Tucker?

4 A. Yes, sir.

5 Q. So Mr. Tucker was involved in the
6 preparation of this schedule to some degree also?

7 A. Yes, sir.

8 Q. And how did you determine that
9 incremental overhead was 50 cents per thousand?

10 MR. PHILLIPS: Objection.

11 Q. As appears on the 1984 column?

12 MR. PHILLIPS: Objection to form.

13 MR. TOPMAN: What's your objection?

14 MR. PHILLIPS: My objection is there
15 is no testimony that he determined the incremental
16 overhead rate per thousand.

17 MR. TOPMAN: He prepared the schedule.

18 MR. PHILLIPS: He didn't prepare this
19 schedule, one of his staff prepared the schedule.

20 Q. Are you familiar with the preparation
21 of the schedule, Mr. Wilson?

22 MR. PHILLIPS: That's a different
23 question, Bruce.

24 A. Yes, sir.

25 Q. Now, the staff member, when he

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1 prepares it for his boss, gives it to his boss and his
2 boss knows it?

3 MR. PHILLIPS: Ask that again and not
4 the one you are asking.

5 Q. How was it determined to put in 50
6 cents incremental overheads?

7 A. There again, that's going to be
8 similar to trade allowances and variable cost to the
9 extent that number is provided to us by the cost group.

10 Q. And that would be Mr. Frick in this
11 case?

12 A. Yes.

13 Q. Which particular person in your
14 department was involved in the preparation of the
15 schedule; do you remember?

16 A. I can't honestly say by looking at
17 this document. We have enough flexibility within a
18 department any one of 2 or 3 people could have prepared
19 this document.

20 Q. The variable cost figure changes from
21 1984 to 1985, and goes to \$14.57.

22 Was that a number that you were
23 involved in calculating or is that a number simply
24 given to you by Mr. Frick?

25 A. That's a number provided to us by the

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1 cost group.

2 Q. Do you understand why the variable
3 cost went from \$14.21 to \$14.57?

4 A. No, sir. Not in any detail to be able
5 to explain it.

6 Q. Do you have any understanding why the
7 variable cost numbers consistently go up from 1984
8 through 1988?

9 A. My assessment, that would be only
10 speculation which wouldn't serve as discussion.

11 Q. The volumes that appear at the top of
12 the column, starting with 2.28 -- 2.20, excuse me, for
13 1984 refers to 2.2 billion sticks?

14 A. That's correct.

15 Q. And who provided you with the volume
16 figures for this chart?

17 A. I'm going to say there again Gene
18 probably would have provided these. I don't know for a
19 fact whether Gene or Tony could have been involved in
20 the discussions on volumes or any of the other
21 assumptions laid out.

22 Q. Do you remember any discussion about
23 any cost improvements with respect to manufacturing at
24 this point in time?

25 A. I am familiar with the terminology

1 cost improvements, yes, sir.

2 Q. In connection with these generics,
3 and your preparation of this table?

4 MR. PHILLIPS: Objection to form.

5 A. I can't honestly relate to this
6 particular document, other than the footnote that makes
7 reference to, "Assumes no manufacturing cost
8 improvements."

9 Q. Do you see the last line on the table
10 there that says, "Trade allowances were assumed to be
11 the same as used in the February proposition"?

12 A. Yes, sir.

13 Q. What February proposition is being
14 referred to there?

15 A. I don't have recall at this point.

16 Q. Did you ever receive a February
17 proposition?

18 A. There again I could say I probably
19 would be able to recall it, but not -- it doesn't pop
20 up.

21 Q. Under the sales revenue note at the
22 bottom of the page, it says, "1985 and forward --
23 assumes the same net price relationship of generic to
24 full priced products that exist at present."

25 From whom did your department obtain

1 that assumption?

2 A. Okay. There again, that would have
3 been set forth with discussions with Gene and Tony
4 possibly.

5 Q. Do you have a recollection of any of
6 these discussions, Mr. Wilson?

7 A. To this specific document, no.
8 Because like I said we have done so many documents.

9 Q. If you would turn to the next to the
10 last page --

11 MR. PHILLIPS: 79523.

12 Q. Entitled, "Summary impact on B&W's 5-
13 year plan trading profit of growth in generics with B&W
14 not participating and B&W contributing at a 1 X factor."
15 Did you prepare that document, Mr.

16 Wilson?

17 A. There again, with the assistance of my
18 staff I probably did, yes.

19 Q. Do you have a recollection of that?

20 A. A vague recollection.

21 Q. Do you recall who asked you to
22 prepare it?

23 A. There again it would be at the request
24 of Gene Tucker or Tony Bacon.

25 Q. You are not of a specific recollection

1 of any conversations leading up to preparing it?

2 A. No, sir.

3 Q. All right. The title, "B&W firm plan,
4 established brands" and underneath it says, "Share and
5 volume"?

6 A. Yes, sir.

7 Q. Excuse me, Mr. Wilson. I would like
8 you to turn, before we proceed with this schedule, to a
9 similar schedule that is couple of pages, I guess, in
10 front of that one which bears your initials at the
11 bottom. It is stamp number 79520.

12 A. Okay.

13 Q. It is entitled, "Impact on B&W's 5-
14 year plan trading profit of growth in branded generic
15 and black and white/private label generic contributing
16 at a 2 X factor and 1.7 X factor respectively."

17 And again I will direct your attention
18 to the line which states, "B&W firm plan, established
19 brands." Do you see that, Mr. Wilson?

20 A. Yes, sir.

21 Q. Could you explain what the figures
22 represent under the various columns '83 through '88
23 next to the words share and volume?

24 A. Basically, this would be B&W's
25 projected and in some case 1983 would be actual, in the

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1 years that would be our projected share of market for
2 the established brand business, and the total volume
3 that that share would represent.

4 Q. Okay. So using as an example 1984, it
5 has share 11.1 which reflects a percent?

6 A. Percent, yes, sir, of the 583.5.

7 Q. And the 583.5 which appears above it
8 and along the line item called industry estimate is the
9 estimate for 1984 in billions of sticks of cigarettes
10 that would be sold?

11 A. That's correct.

12 Q. So you take 11.1 percent, which is
13 B&W's share, times the industry estimate and you come up
14 with B&W's volume?

15 A. That's correct.

16 Q. Which in this case is?

17 A. 64 billion.

18 Q. Right. Then the next column, line
19 item, excuse me, it says, "Generics," under which there
20 are 2 sub items, "Branded, and black and white/private
21 label."

22 The word branded there refers to a
23 branded generic, which is discussed in the body of the
24 proposal to which your schedule is attached?

25 MR. PHILLIPS: Is there a reference to

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1 the body and proposal that you want to look at?

2 MR. TOPMAN: I'm sorry?

3 MR. PHILLIPS: Is there a reference to
4 the body of the proposal that is attached that you want
5 him to look at?

6 MR. TOPMAN: No.

7 MR. PHILLIPS: I don't think he's read
8 it.

9 THE WITNESS: I'll take your word
10 there is a reference to it.

11 Q. I thought you said there was a
12 reference as one of the alternatives?

13 A. Yes, I think there is branded
14 reference in there.

15 Q. That's a branded generic?

16 A. Yes.

17 Q. Then below that is a black and white
18 private label generic?

19 A. (Nodded head affirmatively.)

20 Q. Going over to 1984, under the branded
21 generic it shows 2.3?

22 A. Yes, sir.

23 Q. That is billions of sticks; is that
24 right?

25 A. Yes, sir. These are volume units.

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1 yes, sir.

2 Q. If you will look at the body of the
3 text on page 9, item 4, it's entitled, "Introduce
4 branded generic behind Doral."

5 MR. PHILLIPS: And your question?

6 Q. Do you see that, Mr. Wilson?

7 A. Yes, sir.

8 Q. And the branded under the column
9 generics is a reference to the branded generic and
10 Doral; is that right?

11 A. Whether on the financial schedule
12 that we are looking at branded is Doral only I can't
13 speak to. It is what we expect the branded segment to
14 be over that 5-year period. Doral would be one of those
15 brands inclusive in that number.

16 Q. Okay. Then going back to your chart,
17 there is a line item under generic and under the branded
18 generic line called black and white private label for
19 '84. That number is 28.8. That is also 28 -- excuse
20 me. The 28.8 is a volume number in billions of sticks?

21 A. That's correct.

22 Q. And this is a 5-year projection from
23 1984 to 1988 as to what the black and white private
24 label generics are expected to sell in volumes; correct?

25 A. That's correct.

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1 Q. So in '84, it was projected to sell
2 28.8 billion sticks, and in 1988 it was projected to
3 sell 39.6 billion sticks?

4 A. That's correct, based on this
5 forecast.

6 Q. Okay. And looking down under the line
7 item^s entitled, "Volume cannibalized," there is a number
8 2.7?

9 A. Yes, sir.

10 Q. With a negative sign? That reflects
11 the amount of sticks in billions which you project B&W
12 would lose based upon the generic projected volume and
13 the factors on which^o the table is based?

14 MR. PHILLIPS: Let me hear that one
15 again. It's pretty long.

16 (Whereupon, the reporter then read the
17 record.)

18 A. The 2.7 billion units, use '84 as an
19 example, reflects how much B&W would lose in volume
20 given the growth projected and these volume schedules
21 here assuming that we would suffer 2 X and 1 X, 2 X and
22 1.7 X, I'm sorry, so yes.

23 Q. Now, you and your department prepared
24 this schedule that we have been discussing; correct, Mr.
25 Wilson?

1 MR. PHILLIPS: 79520.

2 A. Yes, sir.

3 Q. Who provided to you the projections
4 for the branded generic and black and white private
5 label generic sales volumes for 1984 through 1988?

6 A. I'm going to say they came from either
7 Tony^S Bacon or Gene Tucker.

8 Q. Do you know how they were developed?

9 A. No, sir.

10 Q. Did you develop any of the numbers
11 under the line item called trading profit impact?

12 A. Yes, sir.

13 Q. Which ones did you develop?

14 A. There again, it would be a joint
15 effort to the extent that arriving at variable margin
16 rates we would have to have the cost department's input
17 into variable costs, so variable margin would be, as I
18 said, a joint effort. Marketing spend would be
19 basically an extraction from the 5-year plan spending
20 patterns. Overheads would be provided by the cost
21 group. Profit shares are a calculated number.

22 Q. Okay. Which of these numbers came
23 from B&W's 5-year plan, if any?

24 A. The industry estimates with exception
25 to 1984, because I think 1984 is footnoted as being

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1 adjusted to reflect lower industry expectations, B&W's
2 market share would have come from the 5 year -- base 5-
3 year plan.

4 Very likely the variable margin rates
5 used to costize the impact off variable margin were
6 coming from the 5-year plan assumptions as well as most
7 of the other trading profit impact items, trading profit
8 impact items.

9 Q. Taking a look at 1988, under generics,
10 is it the basis of the calculation for trading profit
11 impact the fact that the branded generics would grow to
12 19.5 billion sticks at the same time the black and white
13 private label generics were projected to grow to 39.6
14 billion sticks?

15 MR. PHILLIPS: Object to the form of
16 that question.

17 A. I'm not sure. I'm sorry, I'm going to
18 have to ask you to repeat it. I'm not sure I picked the
19 question up itself.

20 Q. Sure.

21 (Whereupon, the reporter then read the
22 record.)

23 MR. PHILLIPS: I still object. I
24 object to the form. I have no idea what you mean by
25 that.

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1 Q. Well, Mr. Wilson, I'll rephrase it if
2 your counsel has got a problem.

3 Is the bottom line of the table in
4 1988 showing impact on Brown & Williamson's trading
5 profit based upon the projection that while branded
6 generics, which include Doral and whatever else is in
7 that category, would grow to 19.5 billion sticks, the
8 private -- the black and white private label generics
9 would continue to grow to 39.6 billion sticks?

10 MR. PHILLIPS: Objection to form. I
11 still don't understand the question, but you can -- if
12 you do, you can answer it.

13 A. Yes, that is a factor relevant to the
14 bottom line but there are other assumptions. Just
15 standing alone, cannot be the only factor.
16 Cannabilization assumptions is one of the key factors.

17 Q. Right, but the trading impact is based
18 upon, at least in part, the projections that the branded
19 generic, while growing to 19.5 billion sticks in 1988,
20 at the same time the black and white private label
21 generics would continue to grow to 39.6 billion sticks?

22 MR. PHILLIPS: Is your question,
23 Bruce --

24 MR. TOPMAN: My question is what I
25 asked him.

1 MR. PHILLIPS: I don't understand your
2 question.

3 MR. TOPMAN: That's okay.

4 MR. PHILLIPS: Is your question just
5 that the trading impact down here is based on the
6 projected figures contained in 1988?

7 MR. TOPMAN: My question is what I
8 asked.

9 MR. PHILLIPS: But your question makes
10 no sense.

11 A. Let me go another route with you. It
12 is -- the trading profit impact is based on the movement
13 from the growth in branded from 1987 to 1988, and the
14 growth in black and white from 1987 to 1988, that
15 movement, that portion of that movement that is shared
16 by B&W, that's the impact on the 120. So, in other
17 words, the 4.5 is the relevant factor because the
18 generic business is growing by 4.5 billion units.
19 That's coming out of somebody's hide.

20 Q. Okay. So if we look, for example, at
21 '85, the trading profit impact is based in part on the
22 branded generic growing from 2.3 billion sticks in '84,
23 to 12.5 billion sticks in 1985, while at the same time
24 the black and white private label generics are growing
25 from 28.8 to 32.2 billion sticks?

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1 MR. PHILLIPS: Objection to form.

2 A. Yes.

3 Q. From whom did you receive the 2
4 factor, 1.7 factor for contribution which is reflected
5 in this table?

6 A. It would be from Tony Bacon or Gene
7 Tucker.

8 Q. These generic volumes that we have
9 been discussing, they assume that Brown & Williamson is
10 not going to be in the generic market for business?

11 MR. PHILLIPS: Objection to form.

12 MR. TOPMAN: What's your objection?

13 MR. PHILLIPS: When you say they, do
14 you mean the people who prepared those figures or do you
15 mean the numbers don't assume?

16 MR. TOPMAN: The figures.

17 MR. PHILLIPS: Okay.

18 A. I don't know for a fact. I have to
19 assume the integrity of the calculation would say no,
20 B&W is not in the business, consequently they would not
21 be in these numbers.

22 Q. That's because obviously that's the
23 only way the table would make sense?

24 A. Exactly. Right.

25 Q. Okay. The note at the bottom of the

1 table --

2 A. Yes, sir.

3 Q. -- can you explain what that means?

4 A. That's the comment, basically is
5 putting the disclaimer on it to the extent we have only
6 measured the impact on established brand business.
7 Within the 5-year plan we have what we would call new
8 product launches, okay? Due to the vague nature of what
9 that new product might be we have not measured the
10 impact of generics on that product.

11 Q. I see. Can you tell me what new
12 products were on the drawing boards in 1984?

13 A. When you mean on the drawing board,
14 not in test market or in test market?

15 Q. Correct. Let's just say in the 5-year
16 plan.

17 A. In the 5-year plan per se there is not
18 a particular brand or type of cigarette defined in the
19 new product only that we would have a new product
20 launch. It would be similar to probably an assumed
21 product we already have in existence such as a Kool
22 extension maybe.

23 Q. And by an extension are you referring
24 to you take a Kool and you make it in a different size
25 or an ultra light instead of a light or something like

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1 that?

2 A. Sure, something of that nature.

3 Q. So the 5-year plan just refers

4 generically to new products?

5 MR. PHILLIPS: Objection.

6 A. No. No.

7 Q. It has a reference though to new
8 products?

9 A. It has a reference to new products.

10 Q. Does it quantify them in any way in
11 terms of volume?

12 A. It quantifies volume, it quantifies
13 contribution and marketing.

14 Q. Does the 5-year plan come out
15 annually?

16 A. Yes, sir.

17 Q. Does it ever come out more than once
18 a year?

19 A. No. My hesitancy, we have a tendency
20 to revise our 5-year plan sometimes.

21 Q. Right. I would include revisions as--

22 A. As a one time.

23 Q. No, as a new type of thing. In other,
24 words, the 5-year plan during a given year might be
25 revised at different points?

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1 A. It could be revised, but it would be
2 within a short period of time after it was prepared.

3 Q. I see. If you would look at your
4 other table which has your initials on it which is stamp
5 number --

6 MR. CONDREN: 79523.

7 Q. Where it has a 1 X factor, that
8 operates in the same fashion as the table we have
9 previously discussed except instead of the 2 X and 1.7
10 factors for loss of volume to generics, this table uses
11 a 1 factor?

12 MR. PHILLIPS: Objection to
13 form.

14 Q. Is that right?

15 A. That's correct.

16 Q. Let's just take about 2 seconds for a
17 break.

18 (Whereupon, a break was then taken.)

19 Q. Would you look at the last page of the
20 Exhibit entitled, "Viceroy Brand contribution"?

21 MR. PHILLIPS: 79524.

22 Q. At the bottom of the document it
23 refers to a Doral price, \$18.63 for 1984; is that
24 correct?

25 A. 18.63, yes.

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1 Q. And that reflects the price per
2 thousand for Doral cigarettes?

3 A. I believe so.

4 Q. Okay. And turning back to your prior
5 2 charts which we have discussed, which reflect trading
6 impact on Brown & Williamson, and remember where we saw
7 under the generic line item the word branded, that is
8 also a reference to Doral?

9 MR. PHILLIPS: Can I have that back?
10 (Whereupon, the reporter then read the
11 record.)

12 MR. PHILLIPS: Objection.

13 MR. TOPMAN: What's your objection?

14 MR. PHILLIPS: Well, in the first
15 place, the question is horribly convoluted, Bruce, but
16 besides that, I don't think that's the testimony. I
17 think that assumes something not in evidence, but he can
18 answer it.

19 MR. TOPMAN: It assumes something not
20 in evidence?

21 MR. PHILLIPS: I think that you have
22 made a mischaracterization of his testimony.

23 MR. TOPMAN: I didn't try to
24 mischaracterize it. I asked him a question.

25 MR. PHILLIPS: Okay. Go ahead. Ask

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1 the question.

2 MR. TOPMAN: I did.

3 MR. PHILLIPS: I think that there is
4 an assumption in there which is incorrect but ask the
5 question, let him answer it. That's the reason I'm
6 objecting.

7 Q. Looking at the 2 schedules in Wilson
8 Exhibit 3, which you have testified about respecting the
9 trading impact on Brown & Williamson -- I'm sorry, I'll
10 withdraw it.

11 Looking at the 2 schedules about which
12 you have testified which your department prepared on the
13 impact on Brown & Williamson's trading profit of
14 generics and particularly the line item generics
15 branded, that is a reference, is it not, Mr. Wilson, to
16 Doral?

17 MR. PHILLIPS: Objection. Do you want
18 my basis for my objection or --

19 MR. TOPMAN: He can answer my question
20 and then you can give me your basis. What's your basis?

21 MR. PHILLIPS: My basis is this has
22 been asked and answered.

23 Q. Go ahead, Mr. Wilson.

24 A. The branded line item would include
25 Doral. To what degree did it include Doral, I don't

1 know.

2 Q. You mean it may include other things
3 in addition to Doral?

4 MR. PHILLIPS: That's what he said.

5 A. That's exactly right.

6 Q. Let's return, if we could, to Wilson
7 Exhibit 2 for identification, and where we were when we
8 were discussing that, was the word original financial on
9 page 2, is that a reference to the page in Wilson
10 Exhibit 3 entitled trading profit effect of B&W entering
11 generic market?

12 MR. PHILLIPS: Which page?

13 Q. Stamp number 79521.

14 MR. PHILLIPS: Your question is
15 whether this, the reference in here original financial
16 refers to this page 79521?

17 Q. Correct.

18 A. The numbers are the same. It's just
19 they are reported in a different context. Whereas this
20 one is reported as 1984 trading profit, this one is
21 reported reserve for trading profit and/or additional
22 trade allowances.

23 Q. But the reference to original
24 financial on your schedule dated 7-18-'84 is a reference
25 to the figures that appear on the trading profit effect

1 statement contained in Wilson Exhibit 2?

2 MR. PHILLIPS: Is that a question?

3 Q. Yes.

4 A. They could pertain to another
5 document.

6 Q. But with the same figures?

7 A. Same figures, okay.

8 Q. In other words, what I'm saying is the
9 column original financial that appears on your 7-18-'84
10 schedule uses the same figures that appear in the
11 trading profit effect schedule in the proposal which we
12 have marked as Wilson Exhibit 3?

13 MR. PHILLIPS: Objection.

14 Q. 2 -- no, 3.

15 MR. PHILLIPS: Objection.

16 A. Yes.

17 MR. TOPMAN: What's your objection?

18 MR. PHILLIPS: I mean, I think that
19 your question is asking him to simply look at the
20 documents and compare the figures, and the documents
21 speak for themselves, Bruce.

22 MR. TOPMAN: Okay, if that's the basis
23 for your objection.

24 Q. So, for example, Mr. Wilson, there is
25 an amount in Wilson 3, schedule for trade allowances of

1 a 1.65?

2 A. That's correct.

3 Q. Then when you look at your 7-18-'84
4 schedule, you see a 1.65 as well under the original
5 financial column?

6 MR. PHILLIPS: Objection.

7 A. That's correct.

8 Q. Okay. And the figures appearing on
9 your 7-18-'84 schedule reflect the composition of the
10 trade allowance figure in the schedule called trading
11 profit effect of Wilson 3?

12 MR. PHILLIPS: Objection.

13 A. From looking at the documents I can't
14 tell that for a fact. I will assume that they are the
15 same.

16 Q. Do you have any reason to believe
17 that it's not correct?

18 A. No, sir.

19 Q. In the calculation of trading profit
20 pre-rebates, original financial, which shows \$4 on your
21 7-18-'84 schedule, that takes into account; am I
22 correct, the same figures that appear on the trading
23 profit effect in Wilson Exhibit 3 under sales revenue
24 variable costs, incremental overheads and profit
25 sharing?

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1 A. They end up with the same results,
2 yes.

3 Q. Okay. So in effect trading profit
4 rebates, pre-rebates under the 7-18-'84 original
5 financial column of \$4 includes a rate per thousand of
6 sales revenue of \$18.86?

7 MR. PHILLIPS: Objection.

8 A. I don't know that for a fact. I can
9 assume that.

10 Q. Do you know how you got the \$4 then if
11 it wasn't from using trading profit effect schedule in
12 Wilson 3?

13 A. Right offhand, no, but I'm reasonably
14 comfortable these are the same numbers.

15 Q. Okay.

16 A. But there could be another source
17 document.

18 Q. Putting that point aside, when you say
19 the same numbers, you are referring to the same numbers
20 that appear on trading profit effect schedule in Wilson
21 3?

22 A. Yes.

23 Q. Can you explain, Mr. Wilson, why
24 trading profit pre-rebates goes from \$4 in the original
25 financial to \$4.31 in round 5?

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1 A. No, sir, not without looking at
2 details behind these calculations.

3 Q. Are there details behind these
4 calculations?

5 A. Yes.

6 Q. Do you have them in your files?

7 A. I'm assuming I have them in my files
8 or my employees have them in their files.

9 MR. TOPMAN: It's been produced?

10 MR. PHILLIPS: If it's in his files
11 it's been produced. Do you want me to check on it?

12 MR. TOPMAN: Yeah, I would.

13 Q. Do you know whether this took into
14 account the cost of manufacturing at Petersburg?

15 A. No, sir.

16 MR. PHILLIPS: Bruce, just a
17 question. When you say this, did you mean Exhibit 2 or
18 Exhibit 3?

19 MR. TOPMAN: Exhibit 2, the 7-18-'84
20 schedule.

21 Q. Am I correct that this does not take
22 into account carrying costs with respect to generics?

23 MR. PHILLIPS: Again on Exhibit 2?

24 MR. TOPMAN: That's the one he's
25 looking at in front of him.

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1 MR. PHILLIPS: Both of them are in
2 front of him actually.

3 A. These numbers do not reflect any
4 carrying costs deductions.

5 Q. Did you consider including carrying
6 cost calculations in this schedule?

7 A. No, sir.

8 Q. Have you made other calculations with
9 respect to generics where you have considered carrying
10 costs?

11 MR. PHILLIPS: Objection.

12 A. Yes.

13 Q. Can you describe those for me, please?

14 A. I think that one of the areas where
15 we applied carrying costs would be relevant to our IRR
16 calculations, which are internal rate of return
17 calculations. We apply a working capital investment
18 rate to a volume over a 15 or 20-year period, depending
19 what time span we are talking about.

20 Q. And you've done that for generics?

21 A. That's correct.

22 Q. Are those documents in your files?

23 A. Yes, sir.

24 MR. TOPMAN: You have produced them.

25 Mr. Phillips?

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1 MR. PHILLIPS: I believe so, or I
2 believe you have them.

3 Q. The initials on the bottom right EPT
4 7-18, does that refer to Mr. Tucker?

5 A. Yes, sir.

6 Q. That reflects the fact you gave a
7 copy of this to Mr. Tucker?

8 A. Yes, sir.

9 Q. Do you know what the top rebate in the
10 volume category was in round 5?

11 A. No, sir, not without looking at a
12 detail of papers.

13 Q. I'm going to call for a -- request the
14 production of the work papers behind this schedule.

15 MR. PHILLIPS: You may already have
16 them. I told you I would check into it, take your
17 request under advisement.

18 Q. Fine. Do you know whether the
19 schedule which is part of page 2 of Wilson Exhibit 2 for
20 identification was sent by Mr. Tucker to Mr. Falk?

21 A. I can only assume through the wording
22 on the front page that he has provided Doug Falk with
23 this.

24 Q. Have you seen the front page before?

25 A. I don't recall.

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1 Q. Let's mark as Wilson Exhibit 4 for
2 identification a one-page document dated July 10, 1984,
3 entitled, "B&W weighted average cost-profits generic
4 business."

5 (Whereupon, Wilson Deposition Exhibit
6 4 was marked for identification.)

7 MR. PHILLIPS: Number?

8 MR. TOPMAN: Stamp number 149982.

9 Q. Can you identify this document, Mr.
10 Wilson?

11 A. Yes, sir.

12 Q. Did you prepare it?

13 A. There again, either I prepared it or
14 my staff prepared it.

15 Q. This was prepared as part of the
16 functioning of the budget department at Brown &
17 Williamson?

18 A. Yes.

19 Q. Who requested you to prepare this?

20 A. I believe we took initiative to
21 prepare it simply to keep track of all the various
22 estimates that were floating around so --

23 Q. Do you know who was providing you
24 with the information about the different rounds 2, 3 and
25 4 respecting the volume rebate and the contract rebate

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1 and the promotion allowance?

2 A. Most of the information that I was fed
3 was fed through Tony and Gene.

4 Q. Mssrs. Bacon and Tucker?

5 A. Yes, sir.

6 Q. That would be true for this document
7 as well?

8 A. Exactly right.

9 Q. And to whom did you distribute this
10 document --

11 MR. PHILLIPS: Objection.

12 Q. -- Wilson Exhibit 4?

13 MR. PHILLIPS: Objection to form.

14 A. More than likely I distributed this to
15 Gene and Tony. I can't tell by looking at the document
16 who received it for distribution.

17 Q. But you believe you distributed it to
18 Mr. Bacon and Mr. Tucker?

19 A. That's correct.

20 Q. At the bottom of the page is a note
21 which says, "B&W composite offer, \$3.18, L&M 7/9/'84
22 offer, assuming B&W mix 2.80."

23 Do you see where it says that on
24 Wilson Exhibit 4, Mr. Wilson?

25 A. \$2.86, yes, sir, I see that.

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1 Q. I'm sorry, did I misspeak?

2 A. I understood you to say 2.80.

3 Q. I meant 2.86.

4 The reference to B&W composite offer
5 \$3.16 is a reference to the figures appearing under
6 round 4, column volume rebate, prime contract rebate and
7 promotional allowance; is that right?

8 MR. PHILLIPS: Objection.

9 Q. Is that correct?

10 A. That's correct.

11 Q. Thank you, sir.

12 Let's mark a one-page document
13 entitled, "1984/1985² estimated generic trading profit,"
14 the lower left-hand corner T.W. Wilson, 9/17/'84, and
15 the line item trading profit shows a 68-cent loss per
16 thousand under 1984.

17 (Whereupon, Wilson Deposition Exhibit
18 5 was marked for identification.)

19 MR. PHILLIPS: Document number 146171
20 -- actually the document number we have is 172218 that's
21 been marked.

22 Q. Have you reviewed that, Mr. Wilson?

23 A. Yes, sir.

24 Q. Do you recognize the document, Wilson
25 Exhibit 5?

1 A. Yes, sir.

2 Q. Okay. And you changed the trading
3 loss profit from 68 cents to 88 cents; is that correct?

4 A. That's correct.

5 Q. And where it says revised in the top
6 right-hand corner --

7 A. Yes, sir.

8 Q. -- is that your handwriting?

9 A. Yes, sir.

10 Q. And that refers to the fact that
11 Wilson Exhibit 6 is a revision of Wilson Exhibit 5?

12 A. That's correct.

13 Q. And did you give the revision or
14 revised document to Mr. Bacon and Mr. Tucker?

15 A. I believe so.

16 Q. Let's mark as Wilson Exhibit 7 for
17 identification a one-page document entitled, "1984/1985
18 estimated generic trading profit, revised 9-19-'84," at
19 the lower left -- withdrawn.

20 MR. PHILLIPS: You're not going to
21 mark it?

22 MR. TOPMAN: No.

23 MR. PHILLIPS: By the way, did you get
24 the number in on Exhibit 6? 172217.

25 Q. Let's mark as a one-page document

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1 Wilson Exhibit 7 for identification entitled, "Generic
2 products 1984 estimated trading profit, stamp number
3 172216."

4 MR. PHILLIPS: I ask you, Bruce,
5 before she marks that, were all these documents stapled
6 together or did they exist individually when we produced
7 them?

8 Q. I don't have any idea.

9 (Whereupon, Wilson Deposition Exhibit
10 7 was marked for identification.)

11 Q. Have you reviewed it, Mr. Wilson?

12 A. Yes, sir.

13 Q. Do you recognize the handwriting?

14 A. No, sir.

15 Q. Have you ever seen this document
16 before?

17 A. Yes, sir.

18 Q. From whom did you receive it?

19 A. I believe I received it from Don
20 Christensen.

21 Q. Can you explain to me how that came
22 about?

23 MR. PHILLIPS: How he received it from
24 Don Christensen?

25 Q. Yes, what were the circumstances?

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1 A. I'm sure what Don was trying to do was
2 give senior management an update on 1984 estimated
3 trading profit, and he was asking us to go through an
4 exercise of verifying his calculations.

5 Q. And that's what you in effect were
6 doing when you prepared what we have previously marked
7 as Wilson Exhibit 6 for identification?

8 MR. PHILLIPS: Objection. Your
9 question is, is that Exhibit 6?

10 MR. TOPMAN: My question is what my
11 question is. If you have an objection, make it to the
12 form.

13 MR. PHILLIPS: Your question is is
14 Exhibit 6 --

15 MR. TOPMAN: Make your objection to
16 the form.

17 MR. PHILLIPS: -- a calculation of the
18 previous document?

19 MR. TOPMAN: It is neither one, and I
20 appreciate you not interrupting my question. If you
21 have an objection to the form, make it. Don't give a
22 speech.

23 MR. PHILLIPS: Bruce, do you think
24 it's necessary to shout?

25 MR. TOPMAN: I'm not shouting.

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1 MR. PHILLIPS: Bruce, it's too bad we
2 don't have a tape recorder in here, for God's sake.

3 MR. TOPMAN: It's too bad. I don't
4 appreciate you going on and on.

5 MR. PHILLIPS: If anything, the record
6 will reflect I'm not going on and on. If I have a
7 question^s as to your question because I don't understand
8 it or I think your question is misleading --

9 MR. TOPMAN: Object to the form.

10 O MR. PHILLIPS: -- I will make my
11 objection.

12 MR. TOPMAN: Object to the form.

13 MR. PHILLIPS: Listen, Bruce, I'll
14 conduct my defense of the deposition, you conduct yours.

15 MR. TOPMAN: Just object to the form.
16 Don't make speeches.

17 MR. PHILLIPS: Don't shout.

18 MR. TOPMAN: I'm not shouting.

19 MR. PHILLIPS: Let the record reflect
20 at least in some people's minds you were.

21 Q. Do you have the question in mind now?

22 | A. Yes, sir, I do.

23 The problem I have is this document
24 does not have a date on it so for me to say that this
25 document was prepared in response to this one, I would^s

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1 be guessing.

2 Q. By that you are referring to that

3 Wilson 6 was prepared in response to Wilson 7?

4 A. That's right. I have to answer I

5 don't know.

6 Q. Okay.

7 MR. PHILLIPS: Question?

8 Q. Going to Wilson 6 for a moment, do you
9 see where it says under overheads 30 cents per thousand?

10 A. Yes, sir.

11 Q. Where did you get that number from?

12 A. It's provided to us by the cost
13 department.

14 Q. That's Mr. Frick?

15 A. Yeah. Could have been provided to us
16 through Tony Bacon through the cost department. Tony is
17 the controller over the cost department.

18 Q. Is that the same amount you were using
19 for the 1985 budgeted year; is that right?

20 MR. PHILLIPS: Object.

21 Q. 30 cents for overhead?

22 MR. PHILLIPS: Objection to form.

23 A. That's correct.

24 Q. By the way, does this schedule, Wilson
25 6, include military sales?

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1 A. Military generic sales?

2 Q. Yes.

3 A. I believe so.

4 MR. PHILLIPS: At some point do you
5 want to think about lunch?

6 (Discussion off the record.)

7 Q. Let's mark as Wilson Exhibit 8 for
8 identification a document dated September 19, 1984, from
9 D.P.C. to L.W. Butler, c.c.'s to others, subject,
10 "Generic budgets."

11 MR. PHILLIPS: Numbers?

12 MR. TOPMAN: 127303-307.

13 (Whereupon, Wilson Deposition Exhibit
14 8 was marked for identification.)

15 A. Yes, sir.

16 Q. Have you reviewed Wilson Exhibit 8 for
17 identification?

18 A. Yes, sir.

19 Q. Can you identify it?

20 A. Yes, sir.

21 Q. You have seen it before?

22 A. Yes, sir.

23 Q. Tell me what it is, would you, sir?

24 A. It's a document prepared by, I
25 believe, Don Christensen, outlining his estimate of

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1 1984 estimated actual results and his recommended 1985
2 budget.

3 Q. Would you, if you would, take a look
4 at the page 3 and then turn on over to page 4 where you
5 will see '84 numbers on both those sheets. And then if
6 you would, examine Wilson 7, which is the handwritten
7 memo.^s

8 Does that refresh your recollection as
9 to the fact that Wilson Exhibit 6 and 7 were made in
10 response to - I'm sorry, Wilson 5 and 6 were made in
11 response to Wilson 7?

12 MR. PHILLIPS: Objection to form.

13 Q. I'm referring you to the handwritten
14 sheet --

15 A. Yes, sir.

16 Q. -- Mr. Wilson.

17 A. Yes, sir. ⁺

18 I'm still not 100 percent sure that
19 it is a response, these Exhibits 6 and 5 are a response
20 to Exhibit 7. Looking at the closeness of the numbers,
21 it's very likely.

22 Q. Thank you, sir.

23 Looking at Number 8 Exhibit^o for
24 identification, did your department prepare a 1985
25 budget respecting generic products? ^s

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1 A. No. No.

2 Q. Did your department prepare a 1985
3 budget for generic products?

4 MR. PHILLIPS: I'm sorry. Let me have
5 that one again.

6 (Whereupon, the reporter then read the
7 record.)

8 MR. PHILLIPS: I don't understand the
9 difference between that question and the last one.

10 Q. You do though.

11 A. A budget was submitted to the budget
12 and cost department.

13 Q. And who submitted it?

14 A. We incorporated it into our total
15 budget.

16 Q. Who submitted that budget?

17 A. Don Christensen.

18 Q. Is the budget he submitted the last
19 page of Wilson Exhibit 8 for identification entitled,
20 "Generic products 1985 estimated trading profit"?

21 A. There again, we do not budget for
22 trading profit. The marketing numbers total specific
23 promotion represents the amount budgeted for specific
24 promotion in 1985, 30,681,000.

25 Q. Let's mark as Wilson Exhibit 9 for

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1 identification a one-page document entitled, "Generic
2 products 1985 budgeted brand contribution." stamp number
3 79888.

4 (Whereupon, Wilson Deposition Exhibit
5 9 was marked for identification.)

6 Q. Would you review what's been marked as
7 Wilson Exhibit 9, please?

8 A. Okay.

9 Q. Can you identify it, sir?

10 A. It looks like another Don Christensen
11 document, which at what point in time it was prepared
12 I'm not quite sure.

13 Q. This is not the final 1985 budget for
14 brand contribution?

15 A. I don't know.

16 Q. Let's mark as Wilson Exhibit 10 for
17 identification a one-page document number 159800
18 entitled, "1985 projected generic trading profit."

19 (Whereupon, Wilson Deposition Exhibit
20 10 was marked for identification.)

21 Q. Can you identify what's been marked as
22 Exhibit 10 as reflecting a 1985 budget for generics?

23 MR. PHILLIPS: Can I have that again?
24 You added something at the end.

25 (Whereupon, the reporter then read

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1 the record.)

2 A. I can't honestly say brand
3 contribution, that's the final budget we tendered. The
4 marketing number, 30,681 is a familiar number and I'm
5 sure that's the budget. As far as reflecting on trading
6 profit, we normally don't budget for trading profit in
7 terms of our total package for generics. As in terms of
8 how we report it here, we are just -- we are pulling it
9 down as trading profit for management's reflection
10 because of generics -- it's a new product in the
11 interest level.

12 Q. Did you prepare this document that's
13 been marked as Wilson Exhibit 10 or your department?

14 A. My department or myself prepared it,
15 yes, sir.

16 Q. You did?
17 The figures under the specific
18 marketing spending were obtained from Mr. Christensen;
19 is that right?

20 A. That's correct, yes, sir.

21 Q. The variable cost of \$14.09 per
22 thousand was obtained from Miss Willingham or Mr. Frick?

23 A. The cost group, yes, sir.

24 Q. One of the 2, you are not sure which
25 one?

1 A. That latter stage I'm not sure
2 because you are talking right at the latter part of '85
3 -- '84, I'm sorry.

4 Q. The fixture expense of 26 cents per
5 thousand has a footnote which reads, "Represents fixture
6 cost at 35 cents per thousand on domestic business (i.e.
7 excludes vending and military)."

8 Is it correct that the dollar figure
9 under the 1985 budget for fixtures, which is \$2,275,000
10 was obtained by simply multiplying 35 cents per thousand
11 times the projected domestic business i.e. excluding the
12 vending and military volume?

13 A. That's correct.

14 Q. And since -- withdraw.
15 The distributor rebate figure of 6
16 cents per thousand --

17 A. Yes, sir.

18 Q. -- how is that calculated?

19 A. It's basically .0035 times gross sales
20 revenue.

21 Q. By gross sales revenue you are meaning
22 prior to deducting the 2 percent discount?

23 A. That's correct.

24 Q. And that's gross sales revenues only
25 from generics?

1 A. As it relates to this calculation,
2 yes, sir.

3 Q. All right. Are you aware of how the
4 -- withdrawn.

5 The distributor rebate is referred to
6 as the DAIP program?

7 S A. D-a-i-p?

8 Q. Yes.

9 A. Yes.

10 Q. O Are you familiar with how that works?

11 A. Yes, sir.

12 Q. O Okay. In calculating the '85 budget,
13 the mix between domestic vending and military which was
14 used is reflected on Mr. Christensen's 1985 budget
15 attached to what we have marked as Wilson Exhibit 8 for
16 identification.

17 MR. PHILLIPS: I think it's Exhibit 9,
18 isn't it, this one?

19 A. They are the same.

20 Q. They are the same number, 8 and 9.

21 A. I'm not sure. That's my hesitancy in
22 answering whether brand contribution is correct. I'm
23 not sure whether the mix has changed. The only way I
24 could determine that would be look at my actual budget
25 file.

1 Q. You have a budget file that shows all
2 the calculations of these numbers?

3 A. Yes.

4 MR. TOPMAN: That's been produced?

5 MR. PHILLIPS: I think so. Do you
6 want me to check on it and see?

7 MR. TOPMAN: Yeah, if you want.

8 Q. Footnote A says, "For budget purposes
9 the early sign-up bonus of 50 cents per thousand has
10 been assumed to be rolled into the volume rebate with
11 the total 1985 burden being 50 cents per thousand across
12 all volume categories."

13 The budget for 1985 for generics was
14 based on the proposition that every B&W customer who
15 bought generics, regardless of when they started buying
16 generics, would receive a rebate of 10 cents per carton
17 purchased; is that right?

18 A. I'm not sure.

19 Q. So it's possible that some B&W
20 customers who bought generics from B&W did not receive
21 the 10 cents rebate which is referred to in footnote A
22 of this document?

23 MR. PHILLIPS: Objection to form.

24 A. I couldn't answer that one either
25 because I'm not sure how the rebates were administered.

1 Q. The '85 budget, however, was based on
2 the proposition that no matter when a B&W customer
3 signed up, they were going to get the 10 cents early
4 sign-up bonus of 10 cents; is that right?

5 MR. PHILLIPS: Objection as to form.

6 A. Reading this document here, to the
7 effect the early sign-up bonus is incorporated into the
8 volume rebate leads me to believe that the volume rebate
9 becomes 10 cents higher in there which means it goes
10 across the board.

11 Q. It doesn't matter when the customer
12 signed up to buy B&W cigarettes, he still gets the 10
13 cents?

14 A. I would have to speculate on that.

15 Q. Isn't that what the footnote --

16 A. That's how I interpret the footnote.

17 Q. That's how you built the '85 budget?

18 A. That's correct.

19 Q. If you look at Mr. Christensen's table
20 for 1985, which is the last page of Wilson Exhibit --

21 MR. PHILLIPS: 8.

22 Q. -- 8, you will see he shows a variable
23 cost of \$14.45 per thousand, whereas the 1985 budget
24 shows a variable cost of \$14.09, a difference of some 36
25 cents.

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1 Can you explain why there is a
2 difference?

3 A. As to the specific numbers, no. I'll
4 leave it at that.

5 MR. TOPMAN: Let's go off for one
6 second.

7
8 * * * * *

9 (Whereupon, a lunch break was then
10 taken.)

1 MR. TOPHAN: Let's mark as
2 Wilson Exhibit 11 for identification, a two-page
3 document, the first page is called Summary of Generic
4 1985 Brand Contribution Estimates, the second page has
5 a similar title. They are both dated 6-18-85 with the
6 initials TWV.

7 MR. PHILLIPS: Numbers?

8 MR. TOPHAN: 129931-32.

9 (Whereupon, Exhibit 11 was marked for
10 identification.)

11 MR. PHILLIPS: Do you know if
12 they were stapled like that?

13 MR. TOPHAN: They are
14 consecutive numbers. Were they stapled when they were
15 produced in this fashion? I don't know. They appear
16 to go together because of the initials and date being
17 identical on both documents.

18 (A discussion was held off the
19 record.)

20 Q. Would you review what's been
21 marked as Wilson Exhibit 11 for identification,
22 please?

23 A. Okay.

24 Q. Can you identify the document,
25 Mr. Wilson?

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1 A. Yes, sir.

2 Q. Did your department at Brown &
3 Williamson prepare it?

4 A. Yes, sir.

5 Q. And did you prepare it on or
6 around June 18, 1985?

7 A. Yes. Well, actually this
8 particular document is an update from the original
9 June 18 to the extent that it has a further estimate
10 on it.

11 Q. You are referring to the last
12 column --

13 A. Last column.

14 Q. -- on Page 2 which says 6-28-85.

15 A. So I would venture to say it was
16 prepared more in that time frame.

17 Q. In other words, the information
18 on the document that appears prior to the 6-28-85
19 column was prepared on a schedule dated 6-18-85?

20 A. That's correct.

21 Q. And then added to that schedule
22 was the 6-28-85 QPR column?

23 A. Yes.

24 Q. Looking at the first page of the
25 document under 1985 budget, and it says under the

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1 dollars column -- those aren't dollars, but those are
2 billions of sticks of cigarettes, aren't they?

3 A. Thousands of sticks. 6.5
4 billion units.

5 Q. Right. You are right. And
6 that's true all the way across under each vertical
7 column heading?

8 A. Every number on this page is a
9 quantity.

10 Q. On the first page of the
11 exhibit?

12 A. Yes.

13 Q. Is it correct, therefore, that
14 the 1985 budget projected a total of 8.6 billion
15 sticks to be sold?

16 MR. PHILLIPS: Objection to the
17 form.

18 A. That's correct.

19 Q. And that 8.6 billion sticks
20 would be comprised of 6.5 billion sticks sold in
21 commercial lines with 1.5 billion in vending machines
22 and .6 billion in the military.

23 MR. PHILLIPS: Objection to
24 form.

25 A. This is what leads me to believe --

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1 by looking at this form that leads me to believe that.
2 As I said earlier, I have some reluctance to sound off
3 on that mix of sales to the final budget.

4 Q. Why is that?

5 A. Because I'm not sure -- this
6 document doesn't make me think that it's the final
7 budget. At the point in time -- this could be the
8 final budget, but I'm not totally sure of that.

9 Q. Well, the document is dated
10 June 18, 1985.

11 A. Un-huh. It's reasonable to
12 think this is the final budget.

13 Q. Okay. Then there is a reference
14 in the next column, 3-20-85 New York meeting. What
15 does that refer to?

16 A. There was a meeting of I think
17 BATUS and BAT people with tobacco people that was
18 going to be held in New York in which we put together
19 an estimated generic trading profit for that meeting --
20 to be reviewed at that meeting.

21 Q. And that estimate used this mix
22 of sales that is under the column 3-20-85?

23 A. That's correct.

24 Q. Do you know where that meeting
25 was held?

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1 A. No, sir.

2 Q. Do you know who attended that
3 meeting?

4 A. No, sir.

5 Q. Have you ever seen any memoranda
6 or other documents reflecting what occurred at that
7 meeting?

8 A. I believe there was a document
9 on the itinerary of that meeting, but I don't
10 recollect or recall what the itinerary was except they
11 were going to discuss generics.

12 Q. Do you know the reason why
13 generics were on the schedule for discussion?

14 A. No.

15 Q. Did Mr. Heger go to that
16 meeting, do you know?

17 A. I don't know.

18 Q. Do you know what led to the
19 change in sales mix from the '85 budget to the 3-20-85
20 New York meeting?

21 MR. PHILLIPS: Objection to the
22 form.

23 A. Not the specifics. They were
24 provided to us by marketing.

25 Q. Who in marketing?

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1 A. I believe Don Christensen.

2 Q. If you look down below under
3 details on private label, it shows Major Brands with a
4 450 opposite its name under the 3-20 column.

5 A. Yes, sir.

6 Q. Is that the same 450 that's
7 reflected up above under the sales units mixed next to
8 private label?

9 A. Yes, sir.

10 Q. The next column is the title QPR
11 4/4/85. What does that refer to?

12 A. That's the quarterly profit
13 report that's tendered. It's called the First
14 Quarterly Profit Projection, which is tendered on
15 4-4-85 to BATUS.

16 Q. And again the change in sales
17 mix was provided by Mr. Christensen?

18 A. I believe so.

19 Q. Is that true for each one of
20 these salesmen's columns?

21 A. In most cases either from Don or
22 one of his subordinates.

23 Q. The next column is 4-11-85 up-
24 date. What does that refer to?

25 A. That's an interim estimate that

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824 24203

1 we were required to pull together, and that was the
2 date in which it was issued.

3 Q. Who asked you to pull it
4 together?

5 A. I believe it was our senior
6 management. I believe it was an internal
7 distribution.

8 Q. Do you remember who asked you to
9 do it?

10 A. No, sir.

11 Q. Do you remember what was said to
12 you?

13 A. Not particularly, no, I do not.

14 Q. Is it routine for your
15 department to do interim type brand contribution
16 estimates for different brand cigarettes?

17 A. It's more routine for us to do
18 interim estimates relevant to new product launches.

19 Q. Looking at the next column,
20 4-19-85 pricing strategy update, which is 8 days after
21 the 4-11-85 update. What does that refer to?

22 A. To the best of my knowledge, it
23 refers to a meeting that was going to be held relevant
24 to the generic pricing strategies in which they wanted
25 to focus on the training profit estimates at that

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1 point in time.
2 Q. Who attended that meeting?
3 A. I don't know.
4 Q. Was that meeting in New Orleans?
5 A. I don't believe so.
6 Q. Was there a meeting about the
7 first^s quarter QPR between BAT and BATUS and Brown &
8 Williamson?
9 A. I believe there was a board
10 meeting.
11 Q. Where was that held?
12 A. I don't recollect.
13 Q. Who from B&W attended that, do
14 you know?
15 A. I'm not sure.
16 Q. Do you know anybody who
17 attended?
18 A. No.
19 Q. Who attended the pricing
20 strategy meeting?
21 A. I don't know.
22 Q. Have you ever received or seen
23 any documents that reflect who attended that meeting?
24 A. I don't recall seeing a document
25 that has the attendees listed.

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824 24205

1 Q. What about indicating any
2 attendee?

3 A. I don't recall any.

4 Q. Do you remember what the pricing
5 strategy was?

6 A. I don't recall all the
7 specifics. I'm aware there is a document prepared.

8 Q. Who was it prepared by?

9 A. I don't know the author.

10 Q. The next column is the 6-10-85
11 current estimate. What gave rise to that being
12 prepared?

13 A. First indication looks like
14 there is a mix change in the sales units. I don't
15 know any specific reasoning for it other than just
16 another update.

17 Q. And in the last column is titled
18 6-28-85 QPR and 6-18-85 estimate, which shows the same
19 sales unit mix as the 6-10.

20 A. Right.

21 Q. And that was prepared why?

22 A. The 6-28 response would be for
23 another quarterly update. The 6-18, there again,
24 would have to be another interim update.

25 Q. Who told you to prepare each of

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824 24206

1 these updates or reports or estimates?

2 MR. PHILLIPS: Objection to
3 form.

4 A. In most cases I would expect it
5 to come from Tony.

6 Q. Did he do it in writing or just
7 stop by?

8 A. Just called us in and had a
9 meeting.

10 Q. Who attended this meeting?

11 A. Depending on the circumstances,
12 most times it would just be myself.

13 Q. Did he indicate to you what he
14 thought the area or range of brand contribution would
15 be expected to be?

16 A. No. Normally that's what we
17 would end up calculating. He would only give us the
18 underlying assumption to go behind the estimate.

19 Q. So that the numbers basically
20 would reflect the assumptions.

21 A. Right.

22 Q. And if you change the
23 assumption, you change the result, right?

24 A. That's the point of update, yes.

25 Q. On the details on private label,

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824 24207

1 there is a line item called GPC. Do you see that, Mr.
2 Wilson?

3 A. Yes, sir.

4 Q. Why did you have that listed on
5 your schedule here?

6 A. Just back-up to what we scored
7 as private label as provided to us by Don Christensen
8 and his group, as to what private labels they were
9 considering.

10 Q. Well, every other private label
11 on the list has an entry next to it at some point in
12 time --

13 A. I would nope so.

14 Q. -- except, let's see.

15 MR. PHILLIPS: I think they all
16 do.

17 Q. Withdrawn. GPC has an entry of
18 400 as of 6-10-85.

19 A. Un-nun.

20 Q. Is that the annual estimate for
21 GPC given by Mr. Christensen to you?

22 A. What do you mean by annual?

23 Q. In other words, a number of
24 units of GPC cigarettes which would be sold from the
25 time of your estimate, in this case 6-10-85, through

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824 24208

1 the end of the year on an annualized basis.

2 A. No. This number here would
3 reflect the number of units we would expect to sell in
4 the period of 1985.

5 Q. Did you make any calculations of
6 trading profit or brand contribution for the private
7 label^s Major Brands?

8 A. I believe we did.

9 Q. Same question for -- I'm sorry?

10 A. You say trading profit, I will
11 have to say brand contribution, I'm pretty sure we
12 did; a trading profit, I'm not sure.

13 Q. Same question for Federated.

14 A. Brand contribution I believe we
15 did.

16 Q. And the same question for GPC.

17 A. Yes, sir.

18 Q. Same answer?

19 A. Same answer.

20 Q. What about the other private
21 labels that are listed there: Safeway, Kroger's,
22 Topco and Daymon?

23 A. To each one I'm not^s sure, but I
24 would suspect we tendered some estimates, yes.

25 Q. Let's go to the next page, if we

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1 could, Mr. Wilson. This schedule is limited to brand
2 contribution; is that right?

3 A. Yes, sir.

4 Q. It doesn't show trading profit
5 or loss.

6 A. That's correct.

7 Q. And you see under the '85
8 budget, which is in the first column, those numbers,
9 do they not, match what we previously marked as Wilson
10 Exhibit 10, the first column called 1985 budget?

11 MR. PHILLIPS: Objection to
12 form.

13 Q. Do they not?

14 MR. PHILLIPS: Objection to
15 form.

16 A. They match to the extent you are
17 dealing with millions of dollars and thousands of
18 dollars, but they are rounded correctly.

19 Q. The '85 budget on Wilson 11 is
20 the '85 budget, right, for generics?

21 A. (Affirmative nod.)

22 MR. PHILLIPS: Objection to
23 form.

24 A. I believe so.

25 Q. The next column, which is that

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824 24210

1 3-20 New York meeting, reflects a change in the
2 variable cost on next to the line item, pre low cost
3 blend from 14.09 to 14.02. Do you know why that change
4 was made?

5 A. No, sir.

6 Q. Do you know whether the 14.09 was
7 calculated using the standard cost figures?

8 A. I don't know how they were
9 calculated. They were provided to us.

10 Q. And that's true for every one of
11 the variable cost line items across the horizontal
12 table opposite pre low cost blend?

13 MR. PHILLIPS: Objection to
14 form.

15 Q. Do you understand my question?

16 A. You are asking me if all of
17 these numbers were provided to me on a pre low cost
18 blend basis; is that true?

19 Q. In other words, every number
20 that appears horizontally on this chart opposite the
21 line item, pre low cost blend, was a number that was
22 provided to you?

23 A. That's correct.

24 Q. And that was by the cost
25 department?

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824 24211

1 A. That's correct.
2 Q. Miss Willingham in this case?
3 A. Yes.
4 Q. Then there is below that another
5 line item called low cost blend benefit.
6 A. (Affirmative nod.)
7 Q. And beginning with the 3-20-85
8 column, through the next to the last column, there are
9 figures there. Who provided those figures to you?
10 A. Cost department, also, through
11 Tony Bacon.
12 Q. He gave them to you?
13 A. Yes.
14 Q. Did he give them in writing to
15 you?
16 A. I don't believe so.
17 Q. He just told them to you?
18 A. (Affirmative nod.)
19 Q. Okay. Now dropping down where
20 the 3-20-85 column is, it says 9 months budgeted
21 quantities, and then it has some figures there. Can
22 you explain that?
23 A. Only to the extent that's the
24 information they gave us to put on this document to
25 footnote it as a reference point.

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824 24212

1 Q. And who is they?

2 A. Gwen and Tony.

3 Q. So you don't have any under-
4 standing what that means?

5 A. No, only to the extent what I've
6 read here that it's relevant, 6.9 billion units times
7 65 cents equals 4.5.

8 Q. I got it. Do you know what the
9 9 month budgeted quantities refers to?

10 MR. PHILLIPS: Objection to
11 form.

12 A. It's relevant to 9 months of
13 this 8.6 at the top.

14 (A discussion was held off the
15 record.)

16 Q. If you take three-quarters of
17 the budgeted volume of 8.6, it doesn't work out to 6.9
18 sticks. Do you have any idea now that was calculated,
19 the 6.9?

20 MR. PHILLIPS: Objection to
21 form.

22 Q. I'll just ask it simply. Do you
23 know how the 6.9 was calculated?

24 A. I don't know the specifics. I
25 can conclude that it's relevant to the last 9 months

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1 of the year which sales are skewed higher towards the
2 latter part of the year.

3 Q. Was that budgeted that way?

4 MR. PHILLIPS: Objection to
5 form.

6 A. I believe so.

7 Q. Do you know what the quarterly
8 budgeting was?

9 A. I don't recall right now, no.

10 Q. The next column shows a foot-
11 note, 6 months revised, 4-1-85 management sales
12 forecast. What does the 6 months revised refer to?

13 A. I believe it refers to the fact
14 that the 8.6 is no longer the budgeted quantities but
15 reflects a revised forecast bringing forward what we
16 know is actual for the first 2 months of the year.

17 MR. TOPMAN: Read that back for
18 me.

19 (The court reporter read the
20 record.)

21 Q. What does this reference 6
22 months mean?

23 MR. PHILLIPS: Objection to
24 form.

25 A. In the context of this footnote

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824 24214

1 I'm assuming she's now referring to 6 months
2 quantities, which would be 5.5 versus previously 9
3 months quantities.

4 Q. Do you know why there was the
5 change from 9 months to 6 months?

6 A. No, sir.

7 Q. Do you know why there was a
8 change from the .65 under the 3-20-65 column, to
9 the .95 under the QPR column?

10 A. No, sir.

11 Q. The management sales forecast,
12 which is referred to in the note, refers to what?

13 A. A revised forecast.

14 Q. Is that done quarterly?

15 A. It's done not every quarter but
16 it's done frequently.

17 Q. But the total volume was not
18 revised that was anticipated for the year 1965,
19 correct?

20 A. That's correct.

21 Q. What was revised was the way the
22 balance of the volume would be sold over the balance
23 of the year.

24 MR. PHILLIPS: Objection.

25 A. That's partly correct. The

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1 distribution changed and also probably the mix
2 changed.

3 Q. By mix, you are referring to?

4 A. Black and White, private label,
5 vending and military.

6 Q. Why would that impact nowever on
7 a blend change?

8 MR. PHILLIPS: Objection to
9 form.

10 A. It probably would not. I don't
11 know that it would.

12 Q. At the last line of the QPR
13 column it says: "Used budgeted VMC rates." What does
14 that refer to?

15 A. It refers to the 14.09 reflecting
16 budgeted rates.

17 Q. The 14.09 therefore under
18 variable cost was calculated using the budgeted
19 standard cost figures.

20 MR. PHILLIPS: Objection to
21 form.

22 A. Budgeted rates, yes.

23 Q. What do you refer to when you
24 mean rates?

25 A. You are putting the word

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1 standard cost on there. Nomenclatures, our rates are
2 standard cost, yes.

3 Q. So there is no difference
4 between rate and standard cost?

5 A. From my knowledge, no.

6 Q. Okay. Now there is a
7 difference, however, between a budgeted standard cost
8 for Brown & Williamson and an operating standard cost
9 for Brown & Williamson; is that right?

10 A. That's correct.

11 Q. And do you know whether the
12 budgeted standard cost was different than the
13 operating standard cost as of 1-1-85?

14 A. No. I don't recall.

15 Q. Was that something, though, that
16 you knew at one time?

17 A. Not as a day-to-day operations,
18 no.

19 Q. But you didn't use the budgeted
20 standard cost to calculate that 14.09; is that right?
21 Miss Willingham did or her department?

22 MR. PHILLIPS: Objection to
23 form. Go ahead.

24 A. She either provided us the
25 budgeted rates or she gave us the absolute amount.

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1 She very well could have given us the rates, and we
2 could have gone through the extensions.

3 Q. In which case she would have to
4 know the product mix.

5 A. Right.

6 Q. In calculating any of these
7 numbers, did you use the same standard product mix or
8 did it change over time?

9 MR. PHILLIPS: Objection to
10 form.

11 A. I'm not sure whether we used a
12 composite for the year or whether we used quarterly
13 rates.

14 MR. TOPMAN: Read that back.
15 (The reporter read the record.)

16 Q. When you say quarterly rates,
17 you mean quarterly product mixes?

18 A. We change standard cost.
19 operating standards several times during a year. I
20 refer to them as quarterly changes. They may not be
21 calendar quarters. Whether we used individual rates
22 for those periods of time or whether we used a
23 composite for the year, which there was a rating that
24 she would have had to give us, she being Gwen.

25 Q. My question is a little

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824 24218

1 different. In terms of the product mix, which I will
2 refer to as that percentage of, you know, Longs and
3 Kings and within that Lights, Ultra Lights, Full
4 Flavors, Menthol and Nonmenthols, did you use a
5 standard or uniform product mix when making all the
6 calculations that appear on this 6-16-85 schedule?

7 A. I don't know. That would have
8 to be addressed by the cost department.

9 Q. Miss Willingham?

10 A. Yes.

11 Q. And she would also know in terms
12 of the standard costs, whether used, as you referred
13 to, a composite standard cost for the whole year or
14 the quarterly numbers.

15 A. That's correct.

16 Q. But we do know, do we not, based
17 upon your chart here, that up through the QPR on
18 4-4-85, the budgeted standard costs were used?

19 MR. PHILLIPS: Objection to
20 form.

21 A. That's true.

22 Q. Looking at the next column,
23 4-11-85, there is a footnote next to low cost blend
24 that says "Six months B and C revised quantities even
25 distribution."

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824 24219

1 What does that mean?

2 A. That means that the budget and
3 cost unit has now taken the 4-1-85 management sales
4 forecast and revised it. Again, and I'm going to
5 assume we would have revised it for actual information
6 to the extent we would have had March history by that
7 point in time, and we redistributed the remaining
8 quantities over the remaining period to be dealt with.

9 Q. What is going to be evenly
10 distributed is the difference between March actual
11 quantities and 8.5 billion projected quantities; is
12 that right? o

13 A. No. It would be March year to
14 date quantities.

15 Q. Okay. The difference between
16 March year to date quantities and 8.6 projected
17 quantities is what's being evenly distributed?

18 A. I don't believe so. The
19 difference between March budgeted quantities -- March
20 year to date budgeted quantities and March year to
21 date actual quantities, that differential would have
22 been evenly spread over the remaining period.

23 Q. It states here 6 months. What
24 does the 6 months refer to, again?

25 MR. PHILLIPS: Objection.

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824 24220

1 A. My interpretation of that, there
2 again, is 6 months of quantities represented by 5.616
3 units which Gwen is using to calculate what her low
4 cost blend benefit would be.

5 Q. In other words, the 5.6 billion
6 sticks relates to the period July 1, 1985 through
7 December 31, 1985?

8 A. I believe that's correct.

9 Q. If you look further down it says
10 first 3 months actual, April 1 revised VMC rates.
11 What does that refer to?

12 A. It refers to the fact that we
13 now have experienced 3 months worth of actual data
14 using operating standards, and those numbers would
15 have been used in this calculation. So, in effect,
16 what we are doing is forecasting 9 months using 3
17 months -- I'm sorry, forecasting -- year, 9 months,
18 and using 3 months actual.

19 Q. Now when you say 3 months
20 actual, we have the actual volume, what are you
21 multiplying the actual volume by in terms of getting a
22 dollar figure?

23 MR. PHILLIPS: Objection.
24 Which dollar figure are you referring to?

25 MR. TOPMAN: Whatever she ne

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824 24221

1 used. It doesn't say in the footnote.

2 MR. PHILLIPS: You say in terms
3 of to get a dollar figure. Which dollar figure are
4 you talking about?

5 MR. TOPMAN: Whichever one he
6 used. I don't know.

7 MR. PHILLIPS: I can't
8 understand, Bruce. I mean, I thought your question is --
9 read his question back.

10 (The previous question was read
11 back the the court reporter.)

12 MR. PHILLIPS: To get which of
13 these numbers is my question. To get the gross paid
14 sales, to get the variable cost, to get the variable
15 margin?

16 Q. Did you use the actual volume to
17 obtain each one of those numbers?

18 MR. PHILLIPS: That's what I'm
19 not clear.

20 Q. Mr. Wilson?

21 A. When I talk in terms of using
22 actual, we are not going through an extension process
23 at that point in time. We are using that which has
24 already been recorded on our records, so we go into
25 our system and say how much variable manufacturing

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824 24222

1 costs have we recorded against generics, how much
2 gross paid sales have we recognized against generics.

3 Q. And where do you get those
4 figures, from, the brand contribution sheet?

5 A. That's one source, yes.

6 Q. What source did you use to
7 calculate this schedule of 6-18-85?

8 A. More than likely it was a brand
9 contribution sheet or the M-1's.

10 Q. What is an M-1?

11 A. It's a cost sheet used to cost
12 out our gross paid sales.

13 Q. You would have used those actual
14 dollar figures for the first quarter respecting gross
15 paid sales?

16 A. Yes.

17 Q. Would you have also used those
18 figures with respect to the variable cost per low cost
19 blend figure?

20 A. Yes.

21 Q. You would not have used it for
22 the figure appearing next to the low cost blend,
23 benefit line item?

24 A. No, sir.

25 Q. Correct?

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824 24223

1 A. Correct.

2 Q. Would you have also used the
3 actual figures for the first quarter respecting
4 marketing expenses?

5 A. Probably not, to the extent we
6 would have been given annual estimates from marketing.

7 Q. You would have used budgeted
8 figures, right?

9 A. Not budgeted figures but an
10 estimated figure.

11 Q. Did Miss Willingham get a copy
12 of this schedule?

13 A. I don't recollect.

14 Q. For the first quarter QPR, why
15 did you not use the operating standards as opposed to
16 the budgeting standards?

17 MR. PHILLIPS: Objection.

18 A. I don't know.

19 Q. Is that because Miss Willingham
20 just told you to use the budgeted?

21 A. We took their lead on that.

22 Q. The reference to April 1 revised
23 VMC rates, is a reference to the April 1 operating
24 standard costs?

25 A. I'm sorry?

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024 24224

1 Q. Under the 4-11 column at the
2 bottom there is a reference to April 1, revised VMC
3 rates. Do you see that?

4 A. Un-huh.

5 Q. VMC stands for variable
6 manufacturing cost, correct?

7 A. Yes, sir.

8 Q. That is a reference to the April
9 1 operating standard cost; is that correct?

10 A. I believe so.

11 Q. The continuation of the footnote
12 opposite low cost blend benefit, refers to a figure of
13 a dollar 13 or 1.13, excuse me. Do you see that?

14 A. Yes, sir.

15 Q. That is a dollar 13, though, is
16 it not?

17 A. Yes, sir.

18 Q. What does that represent?

19 A. I'm not sure.

20 Q. And do you know who gave you
21 that figure?

22 A. Cost department.

23 Q. Miss Willingham?

24 A. Yes.

25 Q. If you look at the column 6-10-85 --

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824 24225

1 A. Yes, sir.

2 Q. -- it says at the bottom

3 "includes 2.5 additional third quarter promotions
4 spend."

5 A. (Affirmative nod.)

6 Q. Do you know what that spending
7 was going to be for?

8 A. I believe most of it was going
9 to be used for stickering.

10 Q. And if you look at the next
11 column, 6-18-85 estimate, there is a footnote that
12 says excludes 2.5 third quarter promotion spending.

13 A. Un-nuh.

14 Q. What happened in the 2 days to
15 make Brown & Williamson decide they were not going to
16 spend 2.5 --

17 MR. PHILLIPS: Objection to
18 form.

19 Q. -- million dollars?

20 MR. PHILLIPS: Objection to
21 form.

22 A. I can't tell you what happened
23 to change the assumptions. That's probably one of the
24 driving forces for having these estimated calculated,
25 what is the financial impact of having the 2.5 in and

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824 24226

1 the 2.5 out.

2 Q. And since this stops at 6-28-85,
3 there is way of knowing from this schedule whether in
4 fact the 2.5 was or was not in or out.

5 MR. PHILLIPS: Objection to
6 form.

7 Q. Right?

8 MR. PHILLIPS: In or out what?

9 MR. TOPMAN: In or out of the
10 budget.

11 MR. PHILLIPS: Same objection.

12 A. The 2.5 was never in the budget.

13 Q. Okay, in the estimates.

14 A. Okay.

15 MR. PHILLIPS: Objection.

16 A. May I ask you to repeat the
17 question?

18 Q. Sure. Is it correct that the
19 reason the 2.5 million in promotional spending for the
20 third quarter, which had been included in the 6-10-85
21 estimate, was excluded from subsequent estimates, was
22 because it had not been declared to BATF?

23 MR. PHILLIPS: Objection.

24 A. I don't have information that
25 would tell me that. I can't respond to that.

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1 snows 6-18 and 6-28 with the same sales unit mix.

2 A. Right. Well, my recollection is
3 that this document is not fully correct in that the
4 rebates reflect that the 4-19 mix. Okay?

5 Q. Un-nuh.

6 A. Consequently when we made the
7 change, we changed the rebates. And that's why the
8 footnote was put there to prompt our memory.

9 Q. So that the 6-10 and the 6-10
10 columns on Page 2 of the exhibit, do not reflect the
11 correct product mix with respect to the calculation of
12 the rebates and allowances?

13 MR. PHILLIPS: Objection.

14 I see it.

15 A. Yeah, that's a true statement.

16 Q. Am I also correct that if
17 operating standard costs were used to calculate the
18 figures for variable cost in the 1985 budget, the 3-
19 20-85 and the QPR 4-4, the results would be different
20 than they are on your schedule.

21 MR. PHILLIPS: Objection to
22 form.

23 A. I'm sorry, I'm going to have to
24 ask you to repeat it one more time.

25 Q. Of course. With respect to the

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1 1985 budget figures, the March 20, 1985 figures and
2 the first quarter QPR figures for variable cost per
3 low cost blend, if the operating standard cost had
4 been used rather than the budgeted standard cost, such
5 figures would have been different than they are on
6 your 6-18 schedule.

7 MR. PHILLIPS: Objection to
8 form.

9 A. That's -- I don't know what
10 those rates would have been. The operating standards
11 could have been the same as budgeted standards. So I
12 can't answer that.

13 Q. It is correct, though, that
14 obviously if the operating standard for 1-1-85 were
15 different from the 1985 budgeted standard costs, then
16 the results in fact would have been different --

17 MR. PHILLIPS: Objection.
18 Objection to form.

19 Q. -- than appearing on your 6-18
20 schedule?

21 MR. PHILLIPS: Objection to
22 form.

23 A. That's a true statement if they
24 were different.

25 (A short recess was taken.)

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1 MR. TOPMAN: Let's mark as
2 Wilson Exhibit 12, a three-page document, each of
3 which is entitled 1985 budget. The first page is
4 summary of 1-1-85 standard variable manufacturing
5 costs, the second page is the same thing for 4-1-85,
6 the third is the same thing for 9-1-85. Stamp numbers
7 1642^S45 through 47.

8 MR. PHILLIPS: 16, I'm sorry?

9 MR. TOPMAN: 4245 through 47.

10 (Whereupon, Exhibit 12 was marked for
11 identification.)

12 A. Yes, sir.

13 Q. Can you identify what's been
14 marked as Wilson Exhibit 12 for identification?

15 A. It looks like a 1985 budgeted
16 standard variable manufacturing cost, what we call Sum
17 Sum sheets.

18 Q. And your reference on the
19 schedule dated 6-18-85, which is part of Wilson
20 Exhibit 11, to use budgeted VMC rates is a reference
21 to the standard cost rates appearing on Page 1 of
22 Wilson 12?

23 A. I suggest to you it would be
24 Page 1, 2 and 3 to the extent that when we say we use
25 budgeted rates, we would use the budgeted rates which

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1 were in effect for each respective period.

2 Q. But on Wilson 11 where it shows
3 used budgeted rates, it's under QPR 4/4/85.

4 A. Un-huh.

5 Q. Which is the end of the first
6 quarter.

7 A. No. Okay? I'll try to explain
8 that.

9 Q. Sure.

10 A. You have at this point at 4-4-85
11 you have 2 months worth of actual experience, and you
12 have estimated the third month. Actual results are
13 not in by April the 4th.

14 Q. So, in other words, figures that
15 appear in the QPR for the first quarter are 2 months
16 of actual numbers and only one month using budgeted
17 standard costs.

18 A. That's correct.

19 Q. How come it doesn't say that
20 when it does say it under the 4-11-85 update?

21 MR. PHILLIPS: Objection to
22 form.

23 A. I'm going back and say I don't
24 know. I believe I'm using -- 14.09 tells me that we
25 were using budgeted rates for the entire period.

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1 Whether the budgeted rates were in effect for January
2 and February actual results, I don't know.

3 MR. PHILLIPS: Could you read
4 back Mr. Wilson's answer, please?

5 (The court reporter read the record.)

6 Q. The 14.09 figure that you just
7 referred to, is that figure which appears in the first
8 quarter QPR column under variable cost per low cost
9 plant, correct?

10 A. To the best of my knowledge.

11 Q. That 14.09 figure you believe was
12 calculated using the 1-1-85 budgeted standard cost
13 rates?

14 MR. PHILLIPS: Objection.

15 A. The footnote leads me to believe
16 that, yes.

17 Q. And that is also true for the
18 14.09 that appears in the 1985 budget column on your
19 schedule dated 6-18-85, Wilson 11?

20 A. This?

21 Q. (Affirmative nod.)

22 MR. PHILLIPS: Objection to
23 form.

24 A. Yes.

25 Q. And I gather you do not know how

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1 the 14.02 was calculated under the column headed 3-20-85?

2 MR. PHILLIPS: Objection.

3 A. No.

4 Q. No meaning you don't know?

5 A. No, I don't know.

6 Q. Okay.

7 MR. TOPMAN: Let's mark as

8 Wilson 13, a two-page document entitled Brown &

9 Williamson Tobacco Corporation Summary of 1-1-85

10 Standard Variable Manufacturing Cost Generic.

11 (Whereupon, Exhibit 13 was marked for
12 identification.)

13 MR. PHILLIPS: Number?

14 MR. TOPMAN: 91403-04.

15 Q. Would you review Wilson Exhibit
16 13, please, Mr. Wilson?

17 A. Okay.

18 Q. Have you reviewed Wilson 13 for
19 identification?

20 A. (Affirmative nod.)

21 Q. Can you identify it?

22 A. It's a 1-1-85 standard variable
23 manufacturing cost Sum Sum sheet.

24 Q. And that reflects the operating
25 standard costs for Brown & Williamson as of 1-1-85?

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1 A. I believe so.

2 Q. And those figures are different.
3 are they not, than the budgeted standard costs that
4 appear on Wilson 12?

5 MR. PHILLIPS: Objection to
6 form.

7 A. Observing both forms, they look
8 to differ.

9 Q. Taking a look, for example, at
10 the budgeted cost for Lights '84, you see a combined
11 variable manufacturing cost of \$5.26 per thousand; is
12 that right?

13 MR. PHILLIPS: Objection.

14 A. As referenced on Exhibit 12,
15 yes.

16 Q. Right, the budgeted cost.

17 A. Un-hun.

18 Q. Whereas the operating standard
19 for Lights '84 as appears on Wilson 13 ranges from
20 \$5.42 up to \$5.57 for the same Lights 84's; is that
21 correct?

22 MR. PHILLIPS: Objection to
23 form.

24 A. As reflected on Exhibit 13,
25 that's a true assessment.

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1 Q. So, am I correct, sir, that with
2 respect to the variable cost pre low cost blend
3 figures that appear in the QPR for the first quarter,
4 that figure on your schedule of 6-18-85 would have
5 been different if you had used the operating standard
6 costs and not the budgeted standard costs.

7 MR. PHILLIPS: Objection to
8 form.

9 A. I believe that's correct.

10 Q. Looking at the 4-11-85 update
11 column, it refers to April 1 revised variable
12 manufacturing costs. That is a reference to the
13 second page of Wilson 12, for identification, entitled
14 Summary of 4-1-85 Standard Variable Manufacturing
15 Costs, 1985 Budget; is that correct?

16 MR. PHILLIPS: Can I have that
17 one again?

18 (The court reporter read the
19 record.)

20 MR. PHILLIPS: Objection.

21 A. I can only speculate on what
22 these rates might reflect to the extent that I was not
23 involved with the actual detail calculation.

24 Q. Miss Willingham would know that,
25 though?

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1 A. Yes.

2 Q. The 4-19-85 and the 6-10-85
3 results are both based upon the assumption of a \$2.50
4 per thousand price increase effective October 1; is
5 that correct?

6 A. Based on Exhibit 11, they both
7 for those estimates assume the price increase of 2.50
8 per M.

9 Q. Is it correct that those price
10 increases of 2.50 per thousand, upon which those 2
11 brand contribution figures are based, never took
12 place?

13 MR. PHILLIPS: Objection.
14 Hang on just a second. Read that question back.

15 (The previous question was read
16 back the the court reporter.)

17 MR. TOPMAN: I'll rephrase it.

18 Q. Is it correct that the \$2.50 per
19 thousand price increase effective October 1, which is
20 the assumption on which the 4-19 and 6-10 estimates
21 are based, that that price increase never took place?

22 MR. PHILLIPS: Still objection.
23 Hang on a second.

24 I'll allow you to answer that up
25 to August 31st, 1985, if it took place by that time.

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1 A. It did not take place.

2 MR. TOPMAN: You mean you won't
3 let me ask him when it says October 1? You won't let
4 me ask him and you won't let him answer that when I
5 got a document here based upon that assumption?

6 MR. PHILLIPS: Bruce --

7 MR. TOPMAN: I'm just asking
8 you.

9 MR. PHILLIPS: No.

10 MR. TOPMAN: You are instructing
11 the witness not to answer a question to determine the
12 validity of an assumption upon which this document
13 rests?

14 MR. PHILLIPS: I don't agree
15 with that characterization, nevertheless, I'll let him
16 testify up to August 31st, 1985 but not thereafter. I
17 don't think we need any colloquy on this. It's a
18 position we've made clear to you numerous times
19 before.

20 MR. TOPMAN: Unbelievable. To
21 let him answer whether it became effective August 31st
22 is irrelevant because it doesn't assume it became
23 effective August 31st, it assumes it became effective
24 after that. So it couldn't possibly have happened
25 before then.

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1 MR. PHILLIPS: Bruce, you want
2 to go on with the deposition?

3 MR. TOPMAN: Wait till the Judge
4 hears it. He's going to hear it, I'm telling you now.

5 MR. PHILLIPS: I hear your
6 threat, Bruce.

7 MR. TOPMAN: It's not a threat.
8 It's an absolute promise.

9 MR. PHILLIPS: You know we've
10 made this position clear to you a number of times. No
11 reason to waste time in colloquy on it.

12 BY MR. TOPMAN: °

13 Q. The 6-28 QPR estimate is based
14 on the assumption that there will be a price increase
15 effective August 1; is that correct?

16 A. As reflected in this document,
17 yes.

18 Q. We are talking here still Wilson
19 11.

20 A. Exhibit 11.

21 Q. Right. And is it not true that
22 such a price increase never took place?

23 MR. PHILLIPS: Objection.

24 A. The price increase did not take
25 place as this assumption laid it out.

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1 Q. Now just to make absolutely
2 clear, the other estimate of 6-18-85 assumes a price
3 increase of a dollar per thousand for Kings and a
4 dollar and a quarter per thousand for Longs effective
5 October 1; is that right?

6 A. That's correct.

7 Q. Did that price increase
8 assumption, on which the 6-18-85 estimate is based,
9 occur?

10 MR. PHILLIPS: Objection. Again
11 same objection as earlier.

12 MR. TOPMAN: Are you instructing
13 him not to answer?

14 MR. PHILLIPS: Up until August
15 31st.

16 MR. TOPMAN: I don't want an
17 answer that way, I want an answer effective October 1.
18 I want to know if the assumption took place.

19 MR. PHILLIPS: You know my
20 position.

21 MR. TOPMAN: You are instructing
22 him not to answer?

23 MR. PHILLIPS: You got it after
24 August 31st, 1985.

25 MR. TOPMAN: That's not my

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1 question. My question is effective October 1.

2 MR. PHILLIPS: Up to events that
3 occurred after 19 -- after August 31st, 1985.

4 MR. TOPMAN: Are you instructing
5 him not to answer my question? I want to know if the
6 assumption became effective on October 1.

7 MR. PHILLIPS: To the extent it
8 requires him to testify as to events that occurred
9 after August 31st, 1985, yes, I'm instructing him not
10 to answer.

11 MR. TOPMAN: Unbelievable. This
12 procedure of instructing witnesses not to answer is
13 going to result, it seems to me, in the necessity of
14 retaking a number of witnesses on these areas where
15 you instruct, and my current view is that we are going
16 to seek costs for attorneys' fees and travel for that
17 kind of thing.

18 MR. PHILLIPS: I hear your
19 threats, Bruce.

20 MR. TOPMAN: It's not a threat.
21 I'm just telling you my statement and hope you will
22 reconsider what I consider to be a very ill-advised
23 position.

24 BY MR. TOPMAN:

25 Q. Mr. Wilson, I forgot to ask you.

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1 Do you know who wrote Exhibit 1, for identification?

2 A. No, sir, I do not.

3 MR. TOPMAN: Let's mark as

4 Wilson Exhibit 14, a one-page document entitled
5 Summary of Generic Brands 1985 Brand Contribution,
6 with the initials TWW and the date 6-11-85.

7 MR. PHILLIPS: Numbers?

8 MR. TOPMAN: Just one number.

9 150026.

10 (Whereupon, Exhibit 14 was marked for
11 identification.)

12 Q. Have you reviewed the document,
13 Mr. Wilson?

14 A. Yes, sir.

15 Q. Did you prepare this document?

16 A. Yes, sir.

17 Q. What's the purpose of this
18 document?

19 A. Basically to summarize the major
20 changes resulting from assumption changes in various
21 estimates that were brought forward.

22 Q. So depending on what the
23 assumptions are on the different estimates that you've
24 made, the last item called brand contribution,
25 changes, and this is an attempt to explain how the

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1 assumptions changed which caused those changes in the
2 estimates?

3 MR. PHILLIPS: Objection to
4 of form.

5 MR. TOPMAN: Maybe I'll withdraw
6 it and try one more time. It was a little convoluted.

7 Read back Mr. Wilson's answer.

8 (The court reporter read the
9 record.)

10 Q. And by brought forward you mean
11 you are referring to estimates that appear on your
12 6-18-85 schedule, which is part of Wilson Exhibit 11?

13 A. Yes.

14 Q. Looking at the first line where
15 it says first quarter Q&R adjustments --

16 A. Yes, sir.

17 Q. -- it says incremental rebate
18 cost, and a figure of minus 1.9 million dollars; is
19 that right?

20 A. Yes.

21 Q. How does increased private label
22 business, if it does, increase the rebate cost and
23 contribute to that 1.9 figure?

24 A. To the extent that some of our
25 private label contracts or -- I wouldn't say contracts --

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1 some of our private label rebates are higher than what
2 we would consider our normal Black and White rebates.

3 Q. You mean the rebate that's paid
4 on private labels is different than what's paid on
5 nonprivate label generics?

6 MR. PHILLIPS: Objection.

7 A. I believe that's correct.

8 Q. In the 4-19-85 adjustments
9 paragraph, it states: "Higher variable manufacturing
10 cost (actual/revised standards versus budget)." And
11 it shows a negative impact on brand contribution of
12 \$700,000, correct?

13 A. That's correct.

14 Q. What does that mean?

15 A. I can only interpret what the
16 schedule is saying, is that the actual revised
17 standards are higher than the budgeted standards.
18 Consequently reflecting a change in the VMC cost.

19 Q. What are you comparing the
20 4-19-85 adjustments to?

21 MR. PHILLIPS: Objection.

22 A. To the previous estimate.

23 Q. Which is what date on your
24 schedule?

25 A. Which schedule?

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1 Q. On your 6-18-85 schedule.

2 A. It would be the QPR 4-4-85
3 estimate.

4 Q. Okay. Looking at those numbers
5 on your 6-18 schedule there is a difference of
6 \$500,000, is there not, between the QPR of the first
7 quarter and the 4-19 figures for the variable cost pro
8 low cost plant?

9 MR. PHILLIPS: Objection to
10 form.

11 Q. Is that correct?

12 MR. PHILLIPS: Objection to
13 form.

14 A. That's what the schedule
15 reflects, yes.

16 Q. So that your summary of 6-11-85,
17 which has been marked as Wilson 14, shows an
18 additional \$200,000 negative impact on brand con-
19 tribution than is shown on your schedule which is part
20 of Wilson 11; is that right?

21 MR. PHILLIPS: Objection to
22 form.

23 A. The comment here is focusing
24 specifically on -- the comment on Exhibit 14 is
25 focusing only on VMC cost alone, which contributed to

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1 the change.

2 Q. Un-hun.

3 A. Whereas you are looking at on
4 schedule -- on Exhibit 11, you are looking at total
5 variable manufacturing cost -- total variable cost,
6 I'm sorry.

7 MR. TOPMAN: Would you have Mr.
8 Wilson's answer read back to me, please?

9 (The court reporter read the
10 record.)

11 Q. When you are referring to total
12 variable costs, you are referring to the third line
13 item.

14 A. Yes.

15 Q. Okay. Correct. That shows for
16 the QPR of April '85 \$116,000, whereas the 4-19 number
17 is 115.9.

18 MR. PHILLIPS: Objection.

19 Q. That is a \$900,000 difference,
20 correct?

21 A. Right.

22 Q. Let's back up for one second,
23 Mr. Wilson. Your description, higher variable
24 manufacturing costs, is a reference to not the low
25 cost blend benefit, is it?

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1 A. Probably not.

2 Q. So that leaves the pre low cost
3 blend as the other component, correct?

4 A. Correct.

5 Q. Now, the QPR for April shows
6 that number to be 121.2.

7 A. Correct.

8 Q. The 4-19 column shows that same
9 number to be 121.7 million dollars. Correct?

10 A. That's correct.

11 Q. Therefore, the difference is
12 \$500,000. Correct?

13 A. That's correct.

14 Q. That is from Wilson 11. Right?

15 A. Okay.

16 Q. When you go to Wilson 13, you
17 show a \$700,000 negative impact rather than a \$500,000
18 negative impact.

19 MR. PHILLIPS: Objection to
20 form.

21 Q. Is that correct?

22 A. That's correct as reflected on
23 the form.

24 MR. PHILLIPS: Objection as to
25 form.

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1 Q. Would you look at the
2 parenthetical where it says "Actual/revised standards
3 versus budget"?

4 A. Un-huh.

5 Q. Do you know what the word budget
6 refers to in that parenthetical of yours?

7 A. I'm assuming it means budgeted
8 standards.

9 Q. And here are we talking about
10 the 4-1-85 budgeted standard?

11 A. I'm talking about -- when I use
12 the term -- in the context of this document I'm using
13 budgeted standards as total years budgeted standards.

14 Q. We've marked previously as
15 Wilson Exhibit 12, three budget standards for 1985.
16 Are you referring to any of those or a composite of
17 those or none of those when you say "budget" in
18 Exhibit 14?

19 A. I'm going to respond to that by
20 saying without getting into the details and under-
21 standing the mechanics of how these numbers were
22 created, I can't respond to what budget means.

23 Q. In other words, you don't know?

24 A. Right, you got it.

25 Q. And is your answer the same for

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1 the parenthetical portion which says actual/revised
2 standards?

3 MR. PHILLIPS: Objection.

4 A. Yes.

5 Q. In Wilson 14 there is a
6 discussion of current adjustments.

7 A. Okay.

8 Q. What does that refer to?
9 Which estimate, if any, on your schedule of 6-18-85
10 which is part of Wilson 11?

11 A. It refers to the 6-10-85 current
12 estimate column.

13 Q. In the second line item it says:
14 "Benefit or shifting military sales to commercial
15 business." What does that mean?

16 A. I don't recall.

17 Q. Does it refresh your
18 recollection that it means that Brown & Williamson
19 wasn't making any money on military sales so they were
20 going to shift it to commercial business?

21 MR. PHILLIPS: Objection.

22 A. No.

23 Q. Does it refresh your
24 recollection that Brown & Williamson was at or near
25 break even on military sales, and that's why they were

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1 going to shift to commercial business?

2 MR. PHILLIPS: Objection.

3 A. No.

4 Q. The last line under current
5 adjustments is "shifting of volumes into higher rebate
6 class, negative impact 1.6 billion dollars."

7 Is that the same thing as what
8 is reflected under the 6-28 QPR?

9 MR. PHILLIPS: Objection.

10 A. Yes, sir.

11 Q. Am I correct, Mr. Wilson, that
12 this schedule, which is part of Wilson 11, for brand
13 contribution, does not reflect the 35 cents per
14 thousand fixture cost that we saw previously reflected
15 on the 1985 budget sheet?

16 MR. PHILLIPS: Objection.

17 A. It does not reflect fixture
18 cost.

19 Q. That's 35 cents per thousand?

20 A. (Affirmative nod.)

21 Q. (Indicating.)

22 A. As reflected on schedule 10 it's
23 35 cents per thousand, yes.

24 Q. And it does not reflect
25 incremental or variable overheads --

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1 MR. PHILLIPS: Objection to
2 form.

3 Q. -- on the schedule dated
4 6-18-85, which is part of Wilson 11; is that correct?

5 MR. PHILLIPS: Objection to
6 form.

7 A. I'm not sure what you mean by
8 variable overheads.

9 Q. Incremental or variable
10 overheads, either one.

11 A. It does not include incremental
12 overheads.

13 Q. And it does not have a deduction
14 for carrying costs, either, does it?

15 A. It does not have a deduction for
16 carrying costs.

17 Q. Did you make any other estimates
18 of brand contribution for generics for 1985 which do
19 not appear on your 6-18-85 schedule which is part of
20 Wilson Exhibit 11 for identification?

21 A. Yes.

22 Q. Was it an estimate between the
23 period when the 1985 budget went into effect and this
24 6-28 QPR?

25 A. Repeat that again, please.

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1 Q. Was an estimate made as of a
2 date between the date of the 1985 budget and the
3 6-28-85 QPR estimate?

4 A. Are you asking me were there
5 interim estimates in between these estimates here?

6 Q. Yes.

7 A. I don't believe so.

8 Q. So you made estimates after the
9 6-28 QPR?

10 A. That's correct.

11 Q. Do you recall when?

12 A. Not specific dates.

13 Q. Months?

14 MR. PHILLIPS: I'll remind the
15 witness of my earlier objections to testimony after
16 August 31st, 1985.

17 MR. TOPMAN: Are you in-
18 structing him?

19 MR. PHILLIPS: No, I'm not
20 instructing him not to answer, I'm instructing him not
21 to answer to the extent that the question calls for
22 information after -- no, I'll let him testify as to
23 what he prepared.

24 MR. TOPMAN: Just won't produce
25 them.

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1 MR. PHILLIPS: No, because you
2 haven't requested them.

3 MR. TOPMAN: True. Yes, we
4 have.

5 MR. PHILLIPS: No. Your fourth
6 document request, the date of the response on it is
7 August 5th.

8 MR. TOPMAN: You are not up to
9 date.

10 MR. PHILLIPS: Haven't seen any
11 other document requests then if you've got one.

12 MR. TOPMAN: It's out there.

13 MR. PHILLIPS: When did you
14 serve it? When?

15 MR. TOPMAN: Recently.

16 MR. PHILLIPS: I haven't seen
17 it. I take it the response is not due immediately.

18 MR. TOPMAN: I didn't say it was
19 producible now.

20 MR. PHILLIPS: I think that's
21 what your comment implied.

22 MR. TOPMAN: No.

23 A. What's the question, again, now?

24 Q. You got me, Mr. Wilson, I don't
25 know either with all this colloquy.

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1 Just read it back.

2 (The court reporter read the
3 record.)

4 Q. A. I would say we made one for
5 August.

6 Q. That was made specifically for
7 generics?

8 A. I would say it was made for
9 generics, but as a part of the QPR or quarterly profit
10 projection.

11 Q. In other words, using as a sort
12 of model or example, your 6-18-85 schedule, what we
13 would expect to see is another column at the end which
14 would say 8-28-85 QPR?

15 A. As to the dates I'm not sure,
16 but --

17 Q. But roughly in that kind of
18 thing.

19 A. Yes.

20 Q. Any other estimates after that?

21 A. I'm sure there were other
22 estimates, but I don't have the specific dates as to
23 when they were prepared.

24 Q. You used the word commercial on
25 the schedule, what does that refer to?

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1 A. Refers to the Black and White
2 business.

3 Q. As opposed to what, military
4 business?

5 A. Private label, military,
6 vending.

7 Q. So it's sort of like everything
8 out private label, military and vending?

9 A. GPC.

10 Q. Would GPC be a private label?

11 A. We don't use it in the context
12 of commercials.

13 Q. When you did the August QPR, did
14 you adjust for the cost to be paid to GPC of 75 cents
15 per thousand?

16 MR. PHILLIPS: Objection.

17 A. Yes, yes.

18 Q. You added that in as an
19 additional cost?

20 A. Yes.

21 Q. Which line item did you add it
22 into?

23 A. If memory serves me correct, I
24 may have created another line called royalty.

25 Q. And that would be under

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1 marketing?

2 A. Yes.

3 Q. Now would it be correct that if
4 price increase had not become effective August 1st,
5 which I believe is what you testified to, the QPR,
6 gross paid sales, would be roughly in the neighborhood
7 of about \$18.70.

8 MR. PHILLIPS: Objection.

9 A. No.

10 Q. It would be higher or lower,
11 roughly?

12 A. It would probably be higher.

13 Q. Even assuming no price increase?

14 A. Right. No, I'm sorry, higher
15 than your number. Higher than what?

16 Q. I'm sorry. In other words, my
17 question is: I asked you if it would be roughly
18 around 18.70 assuming no price increase.

19 A. That's correct.

20 Q. And you said no.

21 A. Right.

22 Q. You said you thought it would be
23 higher you thought.

24 A. Yes, sir.

25 Q. Why would it be higher?

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1 MR. PHILLIPS: Objection.

2 A. It's speculation. Without
3 doing a total calculation on it, you are only talking
4 about a price increase that would be in effect for 4
5 months, so you are only talking about approximately a
6 20 to 30 cents impact on this composite for the year.

7 Q. I see. The reason I used the
8 18.70 figure was it was the figure that you used in
9 your April 11, '85 update which just preceded any
10 price increase assumption.

11 MR. PHILLIPS: Question?

12 Q. So I guess my question is: Why
13 isn't that 18.70 the effective price if it was good
14 enough in April?

15 MR. PHILLIPS: Objection to
16 form.

17 A. A top side answer to that would
18 be that your sales distribution for your 6-28-85
19 estimate is going to be different than the sales
20 distribution as of 4-11-85.

21 Q. In the sense that there is going
22 to be less military.

23 A. No. In the sense that you are
24 more than likely going to have higher sales in the
25 latter part of the year under your 6-28-85 versus your

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1 4-11-85.

2 Q. You are going to have more
3 sales?

4 A. Yes, sir.

5 Q. Why should that affect the per
6 thousand gross paid sales?

7 A. You are going to have more units
8 priced at the higher price.

9 Q. My question is why is it a
10 higher price if there is no price increase?

11 A. Good point. It's reasonable to
12 think that the only mix difference would be the mix
13 and the sales.

14 Q. In the military?

15 A. Yes.

16 Q. Which is at the minimum
17 percentage of your overall thing.

18 A. Yes.

19 MR. PHILLIPS: Objection.

20 Q. So, is it fair to say after
21 having looked it through, that 18.70 is a ballpark
22 gross paid sales per thousand figure without a price
23 increase?

24 A. It's reasonable.

25 Q. Now, when one uses that figure

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1 using the 6-28 QPR numbers, that is a difference of
2 roughly 72 cents.

3 MR. PHILLIPS: Objection.

4 Q. Is that correct?

5 MR. PHILLIPS: Objection.

6 Q. In the gross paid sales amount?

7 A. That is a difference of 72
8 cents.

9 Q. That would therefore reduce the
10 brand contribution from 1.56 to 84 cents; is that
11 correct?

12 MR. PHILLIPS: Objection.

13 A. If that was the only assumption
14 change, yes.

15 Q. Yes. And if we deduct from that
16 the additional GPC cost of 75 cents, that would leave
17 a 9 cent brand contribution.

18 MR. PHILLIPS: Objection.

19 A. You are making the assumption
20 that GPC 75 cents would be applied to all volumes,
21 which is incorrect.

22 Q. What percentage of volumes did
23 you project GPC to apply to?

24 MR. PHILLIPS: As of August or
25 as of --

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1 MR. TOPHAN: As of August.
2 A. As of August?
3 Q. Un-nun.
4 A. I don't recall.
5 Q. You don't remember. The number
6 on the mix sheet, which is Page 1 of Wilson 11, is
7 400,000 sticks; is that right?
8 A. For Major Brand?
9 Q. I'm sorry, for GPC.
10 A. That's correct.
11 Q. Right. In fact, wasn't the
12 projection close to 4 billion sticks for '84?
13 MR. PHILLIPS: Objection.
14 Q. Not at this point in time in
15 6-28 but subsequently. For '85, I'm sorry.
16 MR. PHILLIPS: Objection.
17 Q. Let me withdraw it.
18 A. Okay.
19 Q. Subsequent to the 6-28 QPR which
20 was or was based upon 400,000 GPC sticks, didn't Brown
21 & Williamson make projections that they would sell 4
22 billion sticks of GPC in 1985? Ballpark memory?
23 A. I don't believe so.
24 Q. Do you have a ballpark range for
25 the projection?

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1 A. No, not without referencing my
2 files.

3 MR. TOPMAN: Let's mark as
4 Wilson Exhibit 15 for identification, a document
5 entitled GPC Generic Profitability Summary. It's a
6 four-page document. Stamp number 150239 through 42.

7 (Whereupon, Exhibit 15 was marked for
8 identification.)

9 A. Okay.

10 Q. Have you seen that before, Mr.
11 Wilson?

12 A. Yes, sir.

13 Q. Who asked you to prepare this
14 study?

15 MR. PHILLIPS: Objection.

16 Q. Did anybody ask you to prepare
17 this study?

18 A. I believe so.

19 Q. Who was that?

20 A. Mr. Bacon.

21 Q. Did you prepare any other
22 analysis or reports on GPC besides this one?

23 MR. PHILLIPS: What time frame?

24 MR. TOPMAN: Any time.

25 A. I believe so.

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1 Q. Is this the first one you
2 prepared?

3 A. I don't recall whether this was
4 the first one or middle one or --

5 Q. Did you ever do one which
6 analyzed the cost of 75 cents per thousand as opposed
7 to the cost which is used here in Wilson 15?

8 MR. PHILLIPS: Objection.

9 A. I don't particularly recall that
10 particular analysis.

11 Q. What kind of other analyses did
12 you do at GPC?

13 A. One that I can recall would be a
14 scenario -- several scenarios reflecting different
15 assumptions as to the amount of monies available for
16 royalties, rebates.

17 Q. How did you calculate that?

18 A. Basically similar to a trading
19 profit estimate to the extent you are given a set of
20 assumptions, instead of arriving at a trading profit
21 number, you arrive at a number available for trading
22 profit or rebates/royalties.

23 Q. How did you calculate the volume
24 rebate that would be paid to purchasers of GPC
25 cigarettes?

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824 24261

1 MR. PHILLIPS: Objection.
2 Q. What assumptions did you use?
3 MR. PHILLIPS: Objection.
4 A. In reference to what?
5 Q. How did you determine which
6 volume rebate category a purchaser of GPC cigarettes
7 was going to be placed in?
8 MR. PHILLIPS: Objection.
9 A. In this particular calculation
10 or any calculation?
11 Q. Your other calculation where you
12 tried to figure out how much trading profit was
13 available for GPC.
14 MR. PHILLIPS: Objection.
15 Q. In other words, turn to Page 2
16 of what's been marked as Wilson 15. You have 2
17 scenarios here.
18 A. Un-nun.
19 Q. Which type of scenario did you
20 use in calculating profitability -- trading profit
21 available to pay the royalty for GPC?
22 MR. PHILLIPS: Can I have that
23 one back?
24 (The court reporter read the
25 record.)

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824 24262

1 MR. PHILLIPS: Objection.

2 A. I don't recall specifically what
3 assumption we used.

4 Q. Mr. Wilson, you prepared Wilson
5 15 for identification, did you not?

6 A. My staff or myself would have
7 prepared this.

8 Q. And this was an attempt to
9 analyze profitability of a possible deal between Brown
10 & Williamson and GPC.

11 MR. PHILLIPS: Objection.

12 A. It was an estimate based on
13 certain assumptions to arrive at a trading profit for
14 the GPC business.

15 Q. When did you first hear that
16 Brown & Williamson was considering going into a
17 transaction with GPC?

18 A. I don't recall the specific date
19 or month.

20 Q. Was it '84 or '85?

21 A. I believe it was '85.

22 Q. And it was prior to the date of
23 Wilson 15, which is 6-19-85?

24 A. Yes.

25 Q. How was the pending transaction

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1 described to you?

2 MR. PHILLIPS: Objection.

3 A. There again, it's a discussion
4 that I would have had with Tony Bacon relative to the
5 assumptions that he wanted to lay out and in terms of
6 now he wanted the calculations presented.

7 Q. Again, the validity of the
8 conclusion is as good as the assumptions.

9 MR. PHILLIPS: Objection.

10 A. The numbers reflects the
11 assumptions, yes.

12 Q. Now let's take a look at some of
13 your assumptions. Turn to Page 6-19-85, one
14 assumption is that sales revenue assumes a 2.50 per
15 thousand price increase effective October 1, 1985; is
16 that right?

17 A. That's what the document reads.

18 Q. Now if you look at Wilson 11,
19 your 6-18-85 estimate made one day prior to the GPC
20 estimate, has a different price assumption, doesn't
21 it?

22 A. That's correct.

23 Q. It eliminated the 2.50 per
24 thousand increase effective 10-1, which is the
25 assumption in the GPC document, and changed it to a

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1 dollar per thousand increase for Kings and a dollar
2 and a quarter per thousand increase for Longs.
3 correct?

4 MR. TOPMAN: Objection to your
5 loaded words, Mr. Topman.

6 A. Could you restate the question?

7 MR. TOPMAN: Off the record.

8 (A discussion was held off the
9 record.)

10 MR. TOPMAN: Why don't you just
11 read it back to Mr. Wilson?

12 (The court reporter read the
13 record.)

14 A. The assumptions in the 6-18
15 estimate was changed to reflect the dollar and dollar
16 and a quarter price increase.

17 Q. And that was done the day before
18 the preparation of the GPC analysis of 6-19-85 which
19 used the old 2.50 per thousand price increase
20 effective 10-1-85?

21 MR. PHILLIPS: Objection.

22 Q. Is that correct?

23 MR. PHILLIPS: Objection.

24 A. I believe that's correct.

25 Q. Here we have under variable

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824 24265

1 margin of cost under assumptions in the GPC document,
2 4-1-85 standards inflated to 9-1-85. Do you recall
3 whether these are budget standards or operating
4 standards?

5 A. No, sir.

6 Q. Then it has 2 more assumptions,
7 implementation of 2 items and no implementation of 2
8 other items. Did the implementation of those 2 items,
9 laser perforation and SDS for WTS affect the variable
10 cost figures that are used in this study?

11 MR. PHILLIPS: I'll object to
12 the form of the question.

13 A. They are a part of the
14 assumptions, but I don't know what impact they had on
15 those costs.

16 (A short recess was taken.)

17 Q. Would you turn to the last page
18 of the document? It shows gross paid sales per
19 thousand of \$21.32. Can you explain how you
20 calculated that, Mr. Wilson?

21 A. Basically it reflects a \$2.50
22 price increase effective October 1 as laid out in the
23 assumptions.

24 Q. Okay. You don't know how you
25 arrived at that?

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1 A. Other than it includes the
2 assumption of \$2.50 per lb, no.

3 Q. Take a look at, if you would,
4 the first page of this document, which shows gross
5 paid sales for 1985 of \$19.97.

6 A. Okay.

7 Q. Can you tell me why there is a
8 difference in gross paid sales per thousand for 1985
9 of a dollar.35?

10 A. Not off the top of my head. I
11 can't answer that.

12 Q. Nothing in the assumptions
13 explains that, does it?

14 A. Nothing that reconciles the 2
15 schedules. No, I can't explain it to you.

16 Q. How did you calculate the DAIP
17 at 3 cents?

18 MR. PHILLIPS: D-A-I-P?

19 MR. TOPMAN: Un-hm.

20 Q. Which appears on the last page
21 of Wilson 15.

22 A. That is a function of a .0035
23 times the gross paid sales.

24 Q. Not times the 21.32, is it?

25 A. No, times a grossed number.

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1 Q. Not net of the 2 percent?

2 A. That's correct.

3 Q. And you have 2 figures under the
4 2 scenarios for the rebate. For scenario 1, it's
5 \$4.20, for scenario 2 it's \$3.65.

6 MR. PHILLIPS: What page are you
7 on?

8 MR. TOPKAN: Still on the last
9 page of the exhibit.

10 Q. That is the variable between the
11 2 scenarios; is that correct?

12 MR. PHILLIPS: Objection.

13 Q. For '85.

14 MR. PHILLIPS: Objection.

15 A. The rebates would be a variable
16 along with the impact on profit-sharing.

17 Q. And the 4.20 figure under
18 scenario 1, reflects the assumption that the maximum
19 rebate is paid directly to GPC at the highest volume
20 category; is that correct?

21 A. I believe that's correct.

22 Q. Whereas, the scenario 2 number
23 of 3.65, the volume rebate category, which is used, is
24 the party which actually buys the cigarettes and
25 receives them from Brown & Williamson.

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1 A. The second scenario assumes
2 lower rebates paid directly to customers.

3 Q. Those are GPC customers?

4 A. That's correct.

5 Q. And then you also have an amount
6 for fixtures at 35 cents per carton -- per thousand.
7 excuse me, correct?

8 A. 35 cents per thousand, yes.

9 Q. That's true for both scenarios?

10 A. That's correct.

11 Q. The overheads of 25 cents, which
12 is the next line item refers to what, sir?

13 A. Incremental overheads.

14 Q. Would you look at the bottom of
15 the page, there is like a long narrow box that extends
16 across the width of the page, and it's titled The
17 Pricing Sensitivity. Could you explain that?

18 A. It seems to me that the pricing
19 sensitivity reflects the difference in the base
20 assumption of 2.50, which is assumed in the base case
21 price assumptions. The sensitivity of having
22 effectively a dollar and 12 cents price increase would
23 have a negative impact on trading profit, of a dollar
24 30.

25 Q. And that's because the gross

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1 paid sales would be reduced by a dollar 12 and a half
2 cents net of 2 percent discount?

3 MR. PHILLIPS: Objection.

4 A. No. The net change in selling
5 price would be a dollar 30.

6 Q. How do you calculate the dollar
7 30?

8 A. It's an approximate calculation
9 of the difference between the dollar 12 and the \$2.50
10 adjusted for the impact on DAIP and profit-sharing.

11 Q. So basically what this tells you
12 is instead of using a 2.50 price increase assumption,
13 if you use a dollar 12 price increase assumption, you
14 have a negative impact on trading profit, resulting in
15 a reduced trading profit of the figures that are
16 opposite the line item called revised trading profit.
17 correct?

18 MR. PHILLIPS: Objection.

19 A. That's exactly what the schedule
20 reflects.

21 Q. If you look at page 1, you'll
22 see it shows overheads of 50 cents per thousand for
23 1985.

24 A. Yes, sir.

25 Q. Right? And it also shows

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1 carrying costs of 60 cents, correct?

2 A. Yes, sir.

3 Q. On your last page where you have
4 your scenario analysis, you show only overheads of 25
5 cents. That's correct?

6 A. That's correct, for 1985.

7 Q. Yes. And you show no carrying
8 costs, correct?

9 A. That's correct.

10 Q. The carrying costs plus the
11 additional 25 cents in overheads is equivalent to 85
12 cents, is it not?

13 MR. PHILLIPS: Objection.

14 A. Relevant to what?

15 Q. Using the first page, it shows
16 an additional 25 cents in overheads over scenario 1.
17 Correct?

18 A. (Affirmative nod.)

19 Q. And it also shows carrying costs
20 of 60 cents, which are not shown on scenario 1.

21 A. That's correct.

22 Q. If you add those 2 together, the
23 25 and the 60, you get 85 cents, right?

24 MR. PHILLIPS: Objection.

25 A. That's true.

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1 Q. That 85 cents subtracted from
2 your revised trading profit of 69 cents gives you a 15
3 cent trading profit loss, does it not?

4 MR. PHILLIPS: Objection.

5 Q. Under scenario 1?

6 MR. PHILLIPS: Objection.

7 A. I'm not sure that's a relevant
8 comparison, but if you take 85 sent from 69 cents you
9 are going to get a loss, yes.

10 Q. Would you look at Page 3, which
11 is also entitled GPC Generic Profitability, and you
12 see there where you write adjustments, incremental
13 overheads to bring total to 50 cents?

14 A. Yes, sir.

15 Q. Is it correct, therefore, that
16 it was your view that the incremental overheads should
17 be adjusted to bring the total to 50 cents?

18 MR. PHILLIPS: Objection.

19 A. No, sir, to the extent this
20 schedule was basically requested as a sensitivity to
21 scenario 2 here. It does not necessarily reflect my
22 point of view as to whether or not 50 cents should be
23 assigned or 25 cents should be assigned.

24 Q. You were told --

25 A. Yes.

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- 1 Q. -- to adjust incremental
2 overheads to bring the total to 50 cents.
3 A. Relevant to this schedule, yes.
4 Q. Who told you to do that?
5 A. I believe Mr. Bacon did.
6 Q. And did he tell you why?
7 A. No.
8 Q. Did he tell you why he wanted
9 you to prepare this scenario -- or this sensitivity,
10 excuse me, which is the third page of the document,
11 stamp number 150241?
12 A. I don't recall.
13 Q. Where did you obtain the
14 carrying cost figure of 60 cents per thousand?
15 A. I believe that was provided by
16 Mr. Bacon.
17 Q. And that 50 cents for
18 incremental overheads is per thousand cigarettes; is
19 that right?
20 A. That's correct.
21 Q. On the first page of the
22 document you used overheads at 50 cents per thousand,
23 as well; is that right?
24 A. For 1985, yes.
25 Q. Yes. And did Mr. Bacon tell you

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1 to use that figure, as well?

2 A. I believe so.

3 Q. Did you prepare this document as
4 an entity or at different points in time?

5 A. I honestly don't recall.

6 Q. The reason I ask is that
7 only^s one of the pages is dated 6-18-85, which is the
8 third page of the document, yet it uses a figure of a
9 dollar 21 which comes from a later dated schedule of
10 6-19. And that's sort of my question. Does that help
11 you at all in terms of the timing except for making it
12 more confusing, perhaps?

13 MR. PHILLIPS: Objection.

14 A. I just can't recall as to
15 whether it was a total package or if it was pieced
16 together.

17 Q. Were there early drafts of this
18 document or parts of it?

19 A. I don't recall.

20 Q. The sales volume split or
21 product mix that is assumed in this study or analysis.
22 have you used that in other places or did you just use
23 that one for this piece of work?

24 A. I really can't say.

25 Q. The split between Kings and Long

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1 of 49/51 percentage --

2 A. Yes, sir.

3 Q. -- is that a customary split
4 of that you generally use?

5 MR. PHILLIPS: Objection.

6 Q. -- when it comes to generics?

7 MR. PHILLIPS: Objection.

8 A. Yes, that's directionally
9 correct, yes, sir.

10 (A discussion was held off the
11 record.)

12 MR. TOPHAN: Mr. Phillips has
13 advised me that because he has a responsibility to
14 prepare tomorrow for a deposition on Friday, which he
15 just recently learned about, he will be unable to
16 present the witness, Mr. Wilson, for a continuation of
17 the deposition on tomorrow. He has advised me that he
18 will produce Mr. Wilson to complete this examination.

19 That if we think it necessary,
20 Mr. Condren or somebody else of my office can do it
21 because of a rescheduling problem, and that he will
22 consider and I hope agree to my request that Mr.
23 Wilson's second day be in New York since Mr. Condren
24 and I came down here fully expecting to complete Mr.
25 Wilson today, and, if necessary, tomorrow, which turns

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1 out to be the case.

2 I would suggest that I would
3 like to get Mr. Wilson scheduled relatively promptly
4 so we can get this out of the way for him, as well,
5 and I'd like you to get back to me, certainly by
6 Monday or Tuesday of next week, with some suggested
7 dates.

8 MR. PHILLIPS: I will certainly
9 do that. As I told you in an off the record
10 conversation, I will make him available as soon as
11 conveniently possible, and I'll take under advisement
12 your request for New York. It's more a factor of Mr.
13 Wilson's schedule than of mine, but we will discuss
14 this, and I will get back to you on it next week.

15 MR. TOPMAN: Okay.

16 MR. PHILLIPS: As you know,
17 we've got a lot of depositions in this case, and the
18 fact that they are stacked on top of each other is
19 something I can't avoid. I did think that you would
20 finish with him today, though I realize it's your
21 prerogative to conduct your own deposition.

22 MR. TOPMAN: Off the record.

23 (A discussion was held off the
24 record.)

25 MR. PHILLIPS: We hereby deem it

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1 is confidential pursuant to the stipulation order
2 entered in discovery. In addition, Bruce, I take it
3 that when you finish the deposition, I will have a
4 right to cross on material that you covered today if I
5 want to.

6 MR. TOPMAN: Oh, sure.

7 (Witness excused.)

8 * * * * *

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1 STATE OF KENTUCKY)

2 COUNTY OF JEFFERSON)

3 We, CATHERINE M. PATEM and ALICE TANNENBAUM,

4 notary publics within and for the State at Large

5 aforesaid, do hereby certify that the foregoing is a

6 true, correct and complete transcript of the

7 deposition of THOMAS W. WILSON, taken at the time and

8 place set out in the caption, including objections and

9 remarks of counsel; that the deposition was taken

10 pursuant to notice; that the said witness was duly

11 sworn before giving his deposition; that the

12 appearances were as set out in the caption hereof;

13 that the said deposition was taken down by us in

14 stenotypy and afterwards transcribed on a computer

15 under our direction; that a request was made that the

16 deposition be submitted to the witness for reading and

17 signature.

18 We further certify that we are neither

19 attorney or counsel for, nor related to or employed by

20 any of the parties to the action in which this

21 deposition is taken; and further, that we are not a

22 relative or employee of any attorney or counsel

23 employed by the parties hereto, or financially

24 interested in the action.

25

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Given under my hand as notary aforesaid,
this the 14th day of February, 1986.

Our commissions expires April 2, 1987 and
September 5, 1987, respectively.

Catherine M. Paten, C.P., C.M.

CATHERINE M. PATEN, C.P., C.M.

Court reporter and Notary Public

State of Kentucky at Large

Alice Tannenbaum

ALICE TANNENBAUM, C.P., C.M.

Court Reporter and Notary Public

State of Kentucky at Large

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1 I, the undersigned. THOMAS W.
2 WILSON, do hereby certify that I have read the
3 foregoing deposition, and that to the best of my
4 knowledge, said deposition is true and accurate (with
5 exception of the following corrections listed below:)

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Thomas W. Wilson

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824 24280

1 STATE OF _____

2 COUNTY OF _____

3 Before me, the undersigned
4 Notary Public within and for the above-named county
5 and state, on the _____ day of _____, 1986,
6 personally appeared THOMAS W. WILSON, and acknowledged
7 the execution of the foregoing document.

8 My commission expires:

9 _____

10

11

12

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NOTARY PUBLIC

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